130-433

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 225.

THE TOWN OF ANDES, PLAINTIFF IN ERROR,

vs.

ALBERT SLAUSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

FILED FEBRUARY 24, 1886.

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1 *Summons.*

United States Circuit Court for the Northern District of New York.

ALBERT SLAUSON, Plaintiff,
against
THE TOWN OF ANDES, Defendant.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Witness the Honorable Morrison R. Waite, Chief Justice of Supreme Court of the United States, at the city of Utica, this 12th day of January, in the year one thousand eight hundred and eighty-four.

[L. S.] W. S. DOOLITTLE, *Clerk.*

MATTHEW DALY,
Plaintiff's Attorney.

Office and post-office address, 170 Broadway, New York, New York.

2 (Indorsed.)

To the defendant within named:

Take notice that upon default judgment will be taken for the sum of two thousand seven hundred and nine (2,709) dollars in money, with interest on nine hundred and three dollars from the 1st day of March, 1882, and on nine hundred and three dollars from the 1st day of September, 1882, and on nine hundred and three dollars from the 1st day of March, 1883, besides costs.

MATTHEW DALY,
Plaintiff's Attorney, 170 *Broadway, New York City.*

Filed Jan. 28, 1884.

WILLIAM S. DOOLITTLE, *Clerk.*

UNITED STATES OF AMERICA, } ss:
Northern District of New York, }

I hereby certify that on the 17th day of January, 1884, at the village of Andes, I personally served the within summons on James Ballentine, the supervisor of the within-named defendant, at his house in the said village, by showing the same and delivering to and leaving with said James Ballentine a true copy thereof.

C. D. MACDOUGALL,
U. S. Marshal,
By A. R. BRYANT, *Deputy.*

3 *Complaint.*

Circuit Court of the United States for the Northern District of New York.

ALBERT SLAUSON
against
THE TOWN OF ANDES, in the County of Delaware.

Albert Slauson, by Matthew Daly, his attorney, complains of the defendant and shows—

I. That the plaintiff is a citizen of the State of New Jersey and the defendant is a citizen of the State of New York and a municipal corporation or town, duly created and existing under the laws of the said State of New York, and was and is a town in the county of Delaware, State of New York, and in the northern district of New York.

First.

And the plaintiff shows, upon information and belief—

II. That on the second day of April, 1850, the Legislature of the State of New York passed an act, which became a law, entitled "An act to authorize the formation of railroad corporations and to regulate the same;" and that on the 18th day of May, 1869, said Legislature passed an act, which became a law, amending said act and entitled "An act to amend an act entitled 'An act to authorize the formation of railroad corporations and to regulate the same,' passed April second, one thousand eight hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads."

4 III. That said first-mentioned act in substance and effect authorized the formation of railroad corporations, and provided for the regulation of the same; and that said secondly-mentioned act in substance and effect authorized and empowered the defendant to create and issue its bonds through commissioners to be appointed for the purpose, and to invest same, and to subscribe to the stock of any railroad company formed in pursuance of said acts, and authorized the defendant to subscribe to the stock of the Delhi and Middletown Railroad Company and to issue its bonds in payment therefor.

IV. That the first of said acts is chapter one hundred and forty of the laws of the State of New York for the year 1850, and the second of said acts is chapter 907 of the laws of said State for the year 1869, to which and to any and to all amendments of the same the plaintiff prays leave to refer as if part of this complaint with the like effect as if same were fully set out herein.

V. That in pursuance of said acts of the Legislature Andrew Armstrong, G. R. Shafer, and John Dickson, who were, respectively, freeholders, residents, and tax-payers within the corporate limits of said defendant, were thereafter duly appointed commissioners for said defendant pursuant to and to carry into effect the purposes and provisions of said acts of said Legislature, and that said commission-

ers subsequently qualified and entered upon the discharge of their duties.

VI. That thereafter, and in accordance with said last-mentioned act, the said commissioners duly executed the bonds of the said defendant, dated the first day of September, 1871, each of the denomination in amount of one thousand dollars, becoming due and payable at the expiration of thirty years from their date and
5 bearing interest at the rate of seven per cent. per annum, payable semi-annually, on the first days of March and September in each year, and numbered, respectively, 21, 22, 23, 26, 27, and thirty, and substantially in form as follows:

"No. $1,000.

"UNITED STATES OF AMERICA,

"*State of New York, Town of Andes, County of Delaware.*

"Issued by virtue of an act of the Legislature of the State of New York entitled 'An act to authorize the formation of railroad corporations and to regulate the same,' passed April 2d, 1850, and an act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April 2d, 1850, so as to permit municipal corporations to aid in the construction of railroads, passed May 18th (1869), — sixty-nine, three-fifths being present.

"These acts authorize any city or town, except in the counties of New York, Kings, Erie, Greene, Albany, Westchester, Ontario, Seneca, Yates, Onondaga, and Niagara, to subscribe to the stock of any railroad corporation formed in pursuance of said acts, and these acts authorize the town of Andes to subscribe to the stock of the Delhi and Middletown Railroad Company, and to issue town bonds in payment thereof, all necessary and legal proceedings having been taken and had under said acts.

"Know all men by these presents that we, the undersigned, commissioners under the above-entitled acts for the town of Andes,
6 in the county of Delaware and State of New York, upon the faith and credit and in behalf of said town, for value received, promise to pay to the bearer the sum of one thousand dollars on the first day of Sep'b'r (1901), nineteen hundred and one, at the American Exchange National Bank, in the city of New York, with interest at seven per cent. per annum, payable semi-annually, on the first days of March and September in each year, at the same place, on the presentation and surrender of the coupons for such interest hereto annexed.

"In witness whereof we have hereunto set our hands and seals and have caused the coupons hereto annexed to be signed by John Dickson, one of our number, this first day of September, in the year one thousand eight hundred and seventy-one.

[Delaware County Seal.]

"ANDREW ARMSTRONG. [L. S.]
"G. R. SHAFER. [L. S.]
"JOHN DICKSON. [L. S.]

"Registered in the county clerk's office of the county of Delaware. In witness whereof the clerk of the said county has hereto set his hand and official seal.

"SMITH H. WHITE, *Clerk.*"

VII. That annexed to each of said bonds at the time of its execution and issue was a series of coupons, numbered, respectively, from one to sixty, inclusive, and signed by the said John Dickson, one of said commissioners, by the direction of said commissioners, whereby the said defendant promised and undertook to pay the interest on said bonds semi-annually, on the first days of March and September in each year, until the principal of said bonds should by the terms thereof become due and payable; that said coupons are substantially in form as follows:

7 "$35. The Town of Andes, county of Delaware, will pay the bearer hereof, at the American Exchange National Bank, in the city of New York, on the — day of ——, the sum of thirty-five dollars for six months' interest then due on bond No. —.

"$35. JOHN DICKSON,
"*Commissioner.*"

VIII. That thereafter the said commissioners so as aforesaid appointed and qualified did, in pursuance of said acts of said Legislature and conformably therewith, duly deliver and issue said bonds of the defendant at their par value to the said The Delhi and Middletown Railroad Company, a railroad corporation formed under the said act of the said Legislature first above recited, and received in exchange therefor, as provided in said secondly above mentioned act of said Legislature, stock of said railroad company to an amount equal to that of said bonds at par, which said stock was duly delivered to and accepted by said defendant and has ever since been and still is held by said defendant or its assigns, and that certain of said coupons so as aforesaid issued and delivered thereafter passed into the possession and became the property of the plaintiff herein in good faith and for a valuable consideration, to wit, the coupons numbered 21, 22, and 23, annexed to each of said bonds 21, 22, 23, 26, 27, and 30.

IX. That the semi-annual interest on said bond number 21, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of one hundred and five dollars, has not been paid, nor have the said interest coupons
8 issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of thirty-five dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

X. That the semi-annual interest on said bond number 22, which became due on the first days of March and September, 1882,

and the first day of March, 1883, in all the sum of one hundred and five dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of thirty-five dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XI. That the semi-annual interest on said bond number 23, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of one hundred and five dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of thirty-five dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

9 XII. That the semi-annual interest on said bond number 26, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of one hundred and five dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of thirty-five dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XIII. That the semi-annual interest on said bond number 27, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of one hundred and five dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of thirty-five dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city New of York, and payment thereof was demanded, which was refused.

XIV. That the semi-annual interest on said bond number 30, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of one hundred and five dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond,

10 whereby said defendant promised to pay said interest on said dates, to wit, the sum of thirty-five dollars on each of said dates, been paid, although same were duly presented for payment

at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

Second.

XV. And the plaintiff, repeating the allegations contained in the paragraphs of this complaint numbered I to V, inclusive, further shows, upon information and belief—

XVI. That thereafter, and in accordance with said secondly above mentioned act, the said commissioners duly executed the bonds of the said defendant, dated the first day of September, 1871, each of the denomination in amount of five hundred dollars, becoming due and payable at the expiration of thirty years from their date and bearing interest at the rate of seven per cent. per annum, payable semi-annually, on the first days of March and September in each year, and numbered, respectively, 32, 48, 50, 51, 57, 58, 59, 60, 61, 64, 65, 66, 67, 68, 69, 70, 71, 72, and 73, and substantially in form as follows:

"No. —. $500.

"UNITED STATES OF AMERICA,

"*State of New York, Town of Andes, County of Delaware.*

"Issued by virtue of an act of the Legislature of the State of New York entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April 2nd, 1850, and an act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April 2nd, 1850, so as to permit municipal corporations to aid in the construction of railroads, passed May 18th (1869), — sixty-nine three-fifths being present.

(U. S. Rev. st'mp, canc'l'd.)

"These acts authorize any city or town, except in the counties of New York, Kings, Erie, Greene, Albany, Westchester, Ontario, Seneca, Yates, Onondaga, and Niagara, to subscribe to the stock of any railroad corporation formed in pursuance of said acts, and these acts authorize the Town of Andes to subscribe to the stock of the Delhi and Middletown Railroad Company, and to issue town bonds in payment thereof, all necessary and legal proceedings having been taken and had under said acts.

"Know all men by these presents that we, the undersigned, commissioners under the above-entitled acts for the town of Andes, in the county of Delaware and State of New York, upon the faith and credit and in behalf of said town, for value received, promise to pay to the bearer the sum of five hundred dollars on the first day of September (1901), nineteen hundred and one, at the American Exchange National Bank, in the city of New York, with interest at seven per cent. per annum, payable semi-annually, on the first days of March and September in each year, at the same place, on the presentation and surrender of the coupons for such interest hereto annexed.

"In witness whereof we have hereunto set our hands and seals and and have caused the coupons hereto annexed to be signed by John Dickson, one of our number, this first day of September, in the year one thousand eight hundred and seventy one.

[Delaware County Seal.]

"ANDREW ARMSTRONG. [L. S.]
12 "G. R. SHAFER. [L. S.]
"JOHN DICKSON. [L. S.]

"Registered in the county clerk's office of the county of Delaware. In witness whereof the clerk of the said county has hereto set his hand and official seal.

"SMITH H. WHITE, *Clerk.*"

XVII. That annexed to each of said bonds at the time of its execution and issue was a series of coupons, numbered, respectively, from one to sixty, inclusive, and signed by the said John Dickson, one of said commissioners, by the direction of said commissioners, whereby the said defendant promised and undertook to pay the interest on said bonds semi-annually, on the first days of March and September in each year, until the principal of said bonds should by the terms thereof become due and payable; that said coupons are substantially in form as follows:

"$17.50. The Town of Andes, county of Delaware, will pay the bearer hereof, at the American Exchange National Bank, in the city of New York, on the first day of ——, the sum of seventeen $\frac{50}{100}$ dollars for six months' interest then due on bond No. —.

$17.50.

"JOHN DICKSON,
"*Commissioner.*"

XVIII. That thereafter the said commissioners, so as aforesaid appointed and qualified, did, in pursuance of said acts of said Legislature and conformably therewith, duly deliver and issue said
13 bonds of the defendant, at their par value, to the said The Delhi and Middletown Railroad Company, a railroad corporation formed under the said act of said Legislature first above recited, and received in exchange therefor, as provided in said secondly above mentioned act of said Legislature, stock of said railroad company to an amount equal to that of said bonds at par, which said stock was duly delivered to and accepted by said defendant and has ever since been and still is held by said defendant or its assigns; and that certain of said coupons so as aforesaid issued and delivered thereafter passed into the possession and became the property of the plaintiff herein in good faith and for a valuable consideration, to wit, the coupons numbered 21, 22, and 23, annexed to each of said bonds numbers 32, 48, 50, 51, 57, 58, 59, 60, 61, 64, 65, 66, 67, 68, 69, 70, 71, 72, and 73.

XIX. That the semi-annual interest on said bond number 32, which became due on the first days of March and September, 1882,

and the first day of March, 1883, in all the sum of fifty-two $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XX. That the semi-annual interest on said bond number 48, which become due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of fifty-two
14 $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XXI. That the semi-annual interest on said bond number 50, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of fifty-two $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XXII. That the semi-annual interest on said bond number 51, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of fifty-two $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was
15 demanded, which was refused.

XXIII. That the semi-annual interest on said bond number 57, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of fifty-two $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange

National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XXIV. That the semi-annual interest on said bond number 58, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of fifty-two $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XXV. That the semi-annual interest on said bond number 59, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of fifty-two $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said de-
16 fendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XXVI. That the semi-annual interest on said bond number 60, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of fifty-two $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XXVII. That the semi-annual interest on said bond number 61, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of fifty-two $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XXVIII. That the semi-annual interest on said bond number 64,
17 which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of fifty-two $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit,

said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XXIX. That the semi-annual interest on said bond number 65, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of fifty-two $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XXX. That the semi-annual interest on said bond number 66, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of fifty-two $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American
18 Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XXXI. That the semi-annual interest on said bond number 67, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of fifty-two $\frac{50}{100}$ dollars, has not been paid, nor has the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XXXII. That the semi-annual interest on said bond number 68, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of fifty-two $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XXXIII. That the semi-annual interest on said bond number 69,

which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of fifty-two $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons
19 issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XXXIV. That the semi-annual interest on said bond number 70, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of fifty-two $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XXXV. That the semi-annual interest on said bond number 71, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of fifty-two $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused
20 XXXVI. That the semi-annual interest on said bond number 72, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of fifty-two $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XXXVII. That the semi-annual interest on said bond number 78, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of fifty-two $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were

duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

Third.

XXXVIII. And the plaintiff, repeating the allegations contained in the paragraphs of this complaint numbered from one to five, inclusive, further shows, upon information and belief—

21 XXXIX. That thereafter, and in accordance with the secondly above mentioned act, the said commissioners duly executed the bonds of said defendant, dated the first day of September, 1871, each of the denomination in amount of one hundred dollars, becoming due and payable at the expiration of thirty years from their date and bearing interest at the rate of seven per cent. per annum, payable semi-annually, on the first days of March and September in each year, and numbered, respectively, 31, 32, 71, 72, 73, 74, 75, 81, 82, 83, 84, 85, 86, 90, 91, 92, 93, 94, 95, 96, 97, 98, 157, 158, 159, 160, 161, 162, 163, 164, 166, 167, 169, 171, 172, 175, 176, 177, 178, 179, 180, 181, 183, 188, 189, 190, 194, 202, 204, 207, 208, 209, 211, 212, 214, 215, 218, 219, 220, 224, 228, 233, 234, 236, 238, 241, 242, 243, 244, 246, 247, 248, 249, 250, 252, 254, 257, 258, 259, 260, 261, 262, 264, 265, 267, 268, 269, 270, 274, 277, 278, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, and 300, and substantially in form as follows:

"No. —. $100.

"UNITED STATES OF AMERICA,

"*State of New York, Town of Andes, County of Delaware.*

"Issued by virtue of an act of the Legislature of the State of New York entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April 2nd, 1850, and an act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April 2nd, 1850, so as to permit municipal corporations to aid in the construction of railroads, passed May 18th (1869), — sixty-nine, three-fifths being present.

22 "These acts authorize any city or town, except in the counties of New York, Kings, Erie, Greene, Albany, Westchester, Ontario, Seneca, Yates, Onondaga, and Niagara, to subscribe to the stock of any railroad corporations formed in pursuance of said acts, and these acts authorize the Town of Andes to subscribe to the stock of the Delhi and Middletown Railroad Company and to issue town bonds in payment thereof, all necessary and legal proceedings having been taken and had under said acts.

"Know all men by these presents that we, the undersigned, commissioners under the above-entitled acts for the town of Andes, in the county of Delaware and State of New York, upon the faith and credit and in behalf of said town, for value received, promise to pay to the bearer the sum of one hundred dollars on the first day of September (1901), nineteen hundred and one, at the American Ex-

change National Bank, in the city of New York, with interest at seven per cent. per annum, payable semi-annually, on the first days of March and September in each year, at the same place, on the presentation and surrender of the coupons for such interest hereto annexed.

"In witness whereof we have hereunto set our hands and seals and have caused the coupons hereto annexed to be signed by John Dickson, one of our number, this first day of September, in the year one thousand eight hundred and seventy-one.

[Delaware County Seal.]

"JOHN DICKSON. [L. S.]
"G. R. SHAFER. [L. S.]
"ANDREW ARMSTRONG. [L. S.]

"Registered in the county clerk's office of the county of Delaware In witness whereof the clerk of the said county has hereto set his hand and official seal.

"SMITH H. WHITE, *Clerk.*"

23 XL. That annexed to each of said bonds at the time of its execution and issue was a series of coupons, numbered, respectively, from one to sixty, inclusive, and signed by the said John Dickson, one of said commissioners, whereby the said defendant promised and undertook to pay the interest on said bonds semi-annually, on the first days of March and September in each year, until the principal of said bonds should by the terms thereof become due and payable; that said coupons are substantially in form as follows:

"$3.50. The Town of Andes, county of Delaware, will pay the bearer hereof, at the American Exchange National Bank, in the city of New York, on the first day of ——, the sum of three $\frac{50}{100}$ dollars for six months' interest then due on bond No. —.

"$3.50. JOHN DICKSON,
"*Commissioner.*"

XLI. That thereafter the said commissioners, so as aforesaid appointed and qualified, did, in pursuance of said acts of said Legislature and conformably therewith, duly deliver and issue said bonds of the defendant at their par value to the said The Delhi and Middletown Railroad Company, a railroad corporation formed under the said act of said Legislature first above recited, and received in exchange therefor, as provided in said secondly above mentioned act of said Legislature, stock of said railroad company to an amount equal to that of said bonds at par, which said stock was duly delivered to and accepted by said defendant, and has ever since been and still is held by said defendant or its assigns; and
24 that certain of said coupons, so as aforesaid issued and delivered, thereafter passed into the possession and became the property of the plaintiff herein in good faith and for a valuable consideration, to wit, the coupons, numbers 21, 22, and 23, annexed to each of said bonds, of which the numbers are lastly above given.

XLII. That the semi-annual interest on said bond number 31, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XLIII. That the semi-annual interest on said bond number 32, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof demanded, which was refused.

XLIV. That the semi-annual interest on said bond number 71, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XLV. That the semi-annual interest on said bond number 72, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XLVI. That the semi-annual interest on said bond number 73, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dol-

lars on each of said dates, been paid, although same were
26 duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XLVII. That the semi-annual interest on said bond number 74, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{5}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{5}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XLVIII. That the semi-annual interest on said bond number 75, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{5}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{5}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XLIX. That the semi-annual interest on said bond number 81, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{5}{100}$ dol-
27 lars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, and annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{5}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

L. That the semi-annual interest on said bond number 82, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{5}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{5}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LI. That the semi-annual interest on said bond number 83, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{5}{100}$ dollars, has not

been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in
28 the city of New York, and payment thereof was demanded, which was refused.

LII. That the semi-annual interest on said bond number 84, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LIII. That the semi-annual interest on said bond number 85, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LIV. That the semi-annual interest on said bond number 86, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued
29 therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LV. That the semi-annual interest on said bond number 90, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LVI. That the semi-annual interest on said bond number 91, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

30 LVII. That the semi-annual interest on said bond number 92, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LVIII. That the semi-annual interest on said bond number 93, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LIX. That the semi-annual interest on said bond number 94, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$

31 dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LX. That the semi-annual interest on said bond number 95, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars

on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXI. That the semi-annual interest on said bond number 96, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXII. That the semi-annual interest on said bond number 97, which became due on the first days of March and September,
32 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXIII. That the semi-annual interest on said bond number 98, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXIV. That the semi-annual interest on said bond number 157, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised, to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were
33 duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXV. That the semi-annual interest on said bond number 158, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars,

has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXVI. That the semi-annual interest on said bond number 159, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXVII. That the semi-annual interest on said bond number 160, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$
34 dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXVIII. That the semi-annual interest on said bond number 161, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXIX. That the semi-annual interest on said bond number 162, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXX. That the semi-annual interest on said bond number 163, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXXI. That the semi-annual interest on said bond number 164, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXXII. That the semi-annual interest on said bond number 166, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were
36 duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXXIII. That the semi-annual interest on said bond number 167, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXXIV. That the semi-annual interest on said bond number 169, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dol-

lars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York. and payment thereof was demanded, which was refused.

LXXV. That the semi-annual interest on said bond number 171, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars,
has not been paid, nor have the said interest coupons issued
37 therefor in manner and form aforesaid, to wit, said coupons
numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXXVI. That the semi-annual interest on said bond number 172, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXXVII. That the semi-annual interest on said bond number 175, which become due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXXVIII. That the semi-annual interest on said bond number
176, which became due on the first days of March and Sep-
38 tember, 1882, and the first day of March, 1883, in all the
sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXXIX. That the semi-annual interest on said bond number 177, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dol-

lars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXXX. That the semi-annual interest on said bond number 178, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXXXI. That the semi-annual interest on said bond num-
39 ber 179, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXXXII. That the semi-annual interest on said bond number 180, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXXXIII. That the semi-annual interest on said bond number 181, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank,

in the city of New York, and payment thereof was demanded, which was refused.

LXXXIV. That the semi-annual interest on said bond number 183, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXXXV. That the semi-annual interest on said bond number 188, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXXXVI. That the semi-annual interest on said bond number 189, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of
41 three $\frac{50}{100}$ dollars each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXXXVII. That the semi-annual interest on said bond number 190, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXXXVIII. That the semi-annual interest on said bond number 194, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons num-

bers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

LXXXIX. That the semi-annual interest on said bond number 202, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons
42 numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XC. That the semi-annual interest on said bond number 204, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XCI. That the semi-annual interest on said bond number 207, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XCII. That the semi-annual interest on said bond number 208, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$
43 dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XCIII. That the semi-annual interest on said bond number 209,

which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused

XCIV. That the semi-annual interest on said bond number 211, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

44 XCV. That the semi-annual interest on said bond number 212, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XCVI. That the semi-annual interest on said bond number 214, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XCVII. That the semi-annual interest on said bond number 215, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly

presented for payment at said The American Exchange
45 National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XCVIII. That the semi-annual interest on said bond number 218, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

XCIX. That the semi-annual interest on said bond number 219, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

C. That the semi-annual interest on said bond number 220, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were
46 duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CI. That the semi-annual interest on said bond number 224, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CII. That the semi-annual interest on said bond number 228, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor

in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CIII. That the semi-annual interest on said bond number 233, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid,
47 although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CIV. That the semi-annual interest on said bond number 234, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CV. That the semi-annual interest on said bond number 236, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CVII. That the semi-annual interest on said bond number 238, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21,
22, and 23, annexed to said bond, whereby said defendant
47½ promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CVIII. That the semi-annual interest on said bond number 241, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CIX. That the semi-annual interest on said bond number 242, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CX. That the semi-annual interest on said bond number 243, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued
48 therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXI. That the semi-annual interest on said bond number 244, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXII. That the semi-annual interest on said bond number 246, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dol-

lars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXIII. That the semi-annual interest on said bond number 247, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued
49 therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXIV. That the semi-annual interest on said bond number 248, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXV. That the semi-annual interest on said bond number 249, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXVI. That the semi-annual interest on said bond number 250, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$
50 dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXVII. That the semi-annual interest on said bond number 252, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars,

has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXVIII. That the semi-annual interest on said bond number 254, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

51 CXIX. That the semi-annual interest on said bond number 257, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXX. That the semi-annual interest on said bond number 258, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXXI. That the semi-annual interest on said bond number 259, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National

52 Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXXII. That the semi-annual interest on said bond number 260, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXXIII. That the semi-annual interest on said bond number 261, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXXIV. That the semi-annual interest on said bond number 262, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three

53 $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXXV. That the semi-annual interest on said bond number 264, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXXVI. That the semi-annual interest on said bond number 265, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21,

22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXXVII. That the semi-annual interest on said bond number 267, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued
54 therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXXVIII. That the semi-annual interest on said bond number 268, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXXIX. That the semi-annual interest on said bond number 269, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXXX. That the semi-annual interest on said bond number 270, which became due on the first days of March and September, 1882, and
the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has
55 not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXXXI. That the semi-annual interest on said bond number

274, which become due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXXXII. That the semi-annual interest on said bond number 277, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXXXIII. That the semi-annual interest on said bond number 278, which became due on the first days of March and Sep-
56 tember, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXXXIV. That the semi-annual interest on said bond number 239, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXXXV. That the semi-annual interest on said bond number 290, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same

were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

57 CXXXVI. That the semi-annual interest on said bond number 291, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXXXVII. That the semi-annual interest on said bond number 292, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXXXVIII. That the semi-annual interest on said bond number 293, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange

58 National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXXXIX. That the semi-annual interest on said bond number 294, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXL. That the semi-annual interest on said bond number 295, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued

therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXLI. That the semi-annual interest on said bond number 296, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same
59 were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXLII. That the semi-annual interest on said bond number 297, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXLIII. That the semi-annual interest on said bond number 298, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXLIV. That the semi-annual interest on said bond number 299, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of
60 three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXLV. That the semi-annual interest on said bond number 300, which became due on the first days of March and September, 1882, and the first day of March, 1883, in all the sum of ten $\frac{50}{100}$ dollars, has not been paid, nor have the said interest coupons issued therefor in manner and form aforesaid, to wit, said coupons numbers 21, 22, and 23, annexed to said bond, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was demanded, which was refused.

CXLVI. That the plaintiff, after the issue and delivery of the bonds and coupons aforesaid and before the commencement of this action, purchased and became the owner of the coupons above recited, for value, and that he has since been and now is the lawful owner and holder of each of said coupons, and that there is now actually due thereon from the said defendant to this plaintiff the sum of two thousand seven hundred and nine dollars, with interest on nine hundred and three dollars from March 1st, 1882, and on nine hundred and three dollars from September 1st, 1882, and on nine hundred and three dollars from March 1st, 1883.

Wherefore plaintiff demands judgment against the defendant in said sum of twenty-seven hundred and nine dollars, with interest as aforesaid, and the costs of this action.

61 ALBERT SLAUSON,
By MATTHEW DALY,
Att'y Pl'ff.

DISTRICT OF NEW JERSEY, *ss:*

Albert Slauson, being duly sworn, saith that he is the plaintiff herein; that the foregoing complaint is true of his own knowledge, except as to the matters therein alleged to be stated upon information and belief, and as to those matters he believes it to be true.

A. SLAUSON.

Sworn to before me this 17th day of December, 1883.
[SEAL.] WM. MUIRHEID,
U. S. Com'r, Dist. of N. J.

(Indorsed:) Complaint. Filed Jan'y 12th, 1884.

62 *No.* 1. *Answer.*

U. S. Circuit Court, Northern Dist. of N. Y.

ALBERT SLAUSON *ag'st* THE TOWN OF ANDES. } No. 2512.

The above-named defendant, answering the complaint of the plaintiff in this action, admits that the defendant is a municipal corporation or town, duly created and existing under and by virtue

of the laws of the State of New York, and was and is a town in the county of Delaware and in the northern district of New York.

First defense.

The defendant, further answering said complaint, denies that the defendant has any knowledge or information thereof sufficient to form a belief as to each and every of the allegations contained in said complaint, excepting the allegations hereinbefore admitted.

Second defense.

The defendant, further answering said complaint and as a further defense thereto, alleges, upon information and belief, that the plaintiff is not the real party in interest in this action; that the bonds, coupons, and obligations set forth in the complaint herein, if any such were ever issued, were at the time of the commencement
63 of this action in fact the property of and belonged wholly or in part to George H. Millard, the Hudson City Savings Institution, the Kingston National Bank of Kingston, N. Y., the Rondout Savings Bank, David Kennedy, Mrs. Columbus Van Deusen, James Stewart, Lyle Thompson, James M. Hastings, Sarah M. Phyfe, Elizabeth Hastings, John Phyfe, Mary Douglass, John R. Newrirk, Kate M. Campbell, Thomas Lee, William Gladstone, Thomas E. Hastings, Janette E. McMurdy, the Town of Delhi, and other persons and parties whose names are unknown to defendants and all of whom are residents and citizens of the State of New York, and the said persons are each of them the real partys plaintiff in interest in this action, and this action is prosecuted on the behalf and for the benefit of each of said persons.

Third defense.

The defendant, further answering the said complaint and as a futher defense thereto, alleges that at the time of the commencement of this action there was another action pending and undetermined in the supreme court of the State of New York, commenced on or about January 1st, 1882, brought by Malcolm Calhoun and twenty-five others, residents and tax-payers of the defendant town, pursuant to the laws of the State of New York, against the said George H. Millard, Hudson City Savings Institution, Kingston National Bank, Rondout Savings Bank, Mrs. Columbus Van Deusen, David Kennedy, James Steward, the Town of Delhi, John R. Newrirk, Thomas Hastings, James M. Hastings, Elizabeth Hastings, Sarah M. Phyfe, John Phyfe, Lyle Thompson, Mary Douglass, Kate M. Campbell, Thomas Lee, Janette E. McMurdy,
64 who were then the owners and holders of the bonds, coupons, and obligations set forth in the complaint, if any such were ever issued, and against other persons proper parties thereto; the object of which action and relief demanded therein was to restrain the said persons so holding and owning the said bonds, coupons, and obligations from transferring the same and from enforcing and collecting them against and from the defendant in this action or the plaintiff in said action or other tax-payers of the defendant and the

defendant, and to prevent the funds and property of the defendant from being wasted by being applied to the payment of the same or any part thereof.

That it was alleged in the complaint in said action in substance that whatever bonds, coupons, or obligations of the tenor and effect set forth in the complaint herein had ever been issued were unlawfully issued and without authority of law, and were null and void and not valid or legal obligations of the defendant herein; that said court in which said action was brought had jurisdiction hereof and of the subject-matter of said action and of all the parties thereto; that if the plaintiff had any of the bonds, coupons, or obligations set forth in the complaint at the time of the commencement of this action they were transferred to him and taken and received by him during the pendency of the aforesaid action in the supreme court of the State of New York, and without any consideration and for the purpose of avoiding and nullifying the effect of any
65 judgment which the plaintiff might recover in said action or the effect thereof and in violation of the laws and statutes of the State of New York and of the United States and for the purpose of enabling plaintiff to bring an action in this court, and such transfer was and is void and conferred no title upon plaintiff to said bonds, coupons, and obligations.

That the complaint in said action was duly filed in the clerk's office of the county of Delaware, N. Y., where said action was triable and where the property of the defendant affected thereby was situated, and at the time of filing said complaint a notice of the pendency of said action was duly filed, recorded, and indexed in said clerk's office pursuant to and as required by the laws of the State of New York, and that the plaintiff received said bonds, coupons, and obligations after the filing of said complaint and after the filing, recording, and indexing of said notice, and defendant alleges that the pendency of said action is a bar to plaintiff's right to maintain this action.

Wherefore defendant demands that the complaint of the plaintiff be dismissed, and that the defendant have judgment therefor, with costs of this action.

THE TOWN OF ANDES, *Def't*,
By I. H. MAYNARD,
Att'y for Def't.

Office and post-office address, Stamford, Delaware Co., N. Y.

66 DELAWARE COUNTY, *ss:*

James Ballentine, being duly sworn, says that he resides at Andes, in said county, and is the supervisor of the Town of Andes, the defendant in this action; that he has heard the foregoing answer read and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

JAMES BALLANTINE.

Sworn to before me this 4th day of April, 1884.

JAS. T. SCOTT,
Notary Public.

(Indorsed:) U. S. circuit court, northern district of N. Y. Albert Slauson against The Town of Andes. Copy. Answer. I. H. Maynard & C. M. Shaw, def't's att'ys. Stamford, N. Y. Filed Dec. 13, 1884.

67 *Summons.*

United States Circuit Court for the Northern District of New York.

ALBERT SLAUSON, Plaintiff,
against
THE TOWN OF ANDES, Defendant.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of the service, and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Witness the Honorable Morrison R. Waite, Chief Justice of Supreme Court of the United States, at the city of Utica, this 17th day of January, in the year one thousand eight hundred and eighty-four.

[L. S.] W. S. DOOLITTLE, *Clerk*,
By W. J. BRAND, *Deputy*.

MATTHEW DALY,
Plaintiff's Attorney.

Office and post-office address, 170 Broadway, New York, New York.

68 (Indorsed.)

To the defendant within named:

Take notice that upon default judgment will be taken for $2,044, in money, with interest, $175, from March 1, 1882, and $175 from September 1, 1882, and on $175 from March 1, 1883, and on $175 from Sept. 1, 1883, and on $245 from March 1, 1882, and on $245 from Sept. 1, 1882, and on $245 from March 1, 1883, and on $245 from Sept. 1, 1883, and on $91 from March 1, 1882, and on $91 from Sept. 1, 1882, and on $91 from March 1, 1883, and on $91 from Sept. 1, 1883, besides costs.

MATTHEW DALY,
Plaintiff's Attorney.

Filed Jan. 28, 1884.

WILLIAM S. DOOLITTLE, *Clerk.*

UNITED STATES OF AMERICA, *Northern District of New York,* } ss:

I hereby certify that on the 21st day of January, 1884, at the village of Andes, I personally served the within summons on James Ballentine, the supervisor of the within-named defendant, at a billiard saloon in said village, by showing the same and delivering to and leaving with said Ballentine a true copy thereof.

C. D. MACDOUGALL,
U. S. Marshal,
By A. R. BRYANT, *Deputy.*

69 *No.* 2. *Complaint.*

Circuit Court of the United States for the Northern District of New York.

ALBERT SLAUSON
against
THE TOWN OF ANDES, in the County of Delaware.

Albert Slauson, the plaintiff, by Matthew Daly, his attorney, complains of the defendant and shows—

I. That the plaintiff is a citizen of the State of New Jersey and the defendant is a citizen of the State of New York and a municipal corporation or town, duly created and existing under and by virtue of the laws of the said State of New York, and was and is a town in the county of Delaware, State of New York, and in the northern district of New York.

And plaintiff shows, upon information and belief, for a first cause of action—

II. That on the second day of April, 1850, the Legislature of the State of New York passed an act, which became a law, entitled "An act to authorize the formation of railroad corporations and to regulate the same;" and that on the 8th day of May, 1869, said Legislature passed an act, which became a law, amending said act and entitled "An act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April second, one thousand eight hundred and fifty, so as to per-
70 mit municipal corporations to aid in the construction of railroads."

III. That said first-mentioned act in substance and effect authorized the formation of railroad corporations and provided for the regulation of the same, and that said secondly-mentioned act in substance and effect authorized and empowered the defendant to create and issue its bonds through commissioners to be appointed for the purpose, and to invest same in and to subscribe to the stock of any railroad company formed in pursuance of said acts, and authorized the defendant to subscribe to the stock of the Delhi and Middletown Railroad Company and to issue its bonds in payment therefor.

IV. That the first of said acts is chapter 140 of the laws of the State of New York for the year 1850, and the second of said acts is chapter 907 of the laws of said State for the year 1869, to which and to any and to all amendments of same plaintiff prays leave to refer as if part of this complaint, with the like effect as if same were fully set out herein.

V. That in pursuance of said acts of the Legislature Andrew Armstrong, John Dickson, and G. R. Shafer, who were respectively freeholders, residents, and tax-payers within the corporate limits of said defendant, were thereafter duly appointed commissioners for said defendant, pursuant to and to carry into effect the purposes and provisions of the said acts of the said Legislature, and that said commissioners subsequently qualified and entered upon the discharge of their duties.

VI. That thereafter, and in accordance with said last-mentioned act, the said commissioners duly executed certain bonds of the said defendant, dated the first day of September, 1871, each of the denomination in amount of one thousand dollars, becoming
71 due and payable at the expiration of thirty years from their date and bearing interest at the rate of seven per cent. per annum, payable semi-annually, on the first days of March and September in each year, and numbered, respectively, 1, 2, 3, 4, 5, and substantially in form as follows:

"No. —. $1,000.

"UNITED STATES OF AMERICA,

"*State of New York, Town of Andes, County of Delaware.*

"Issued by virtue of an act of the Legislature of the State of New York entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April 2nd, 1850, and an act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April 2nd, 1850, so as to permit municipal corporations to aid in the construction of railroads, passed May 18th (1869), — sixty-nine, three-fifths being present.

"These acts authorize any city or town, except in the counties of New York, Kings, Erie, Greene, Albany, Westchester, Ontario, Seneca, Yates, Onondaga, and Niagara, to subscribe to the stock of any railroad corporation formed in pursuance of said acts, and these acts authorize the Town of Andes to subscribe to the stock of the Delhi and Middletown Railroad Company and to issue town bonds in payment thereof, all necessary and legal proceedings having been taken and had under said acts.

"Know all men by these presents that we, the undersigned, commissioners under the above-entitled acts for the town of Andes, in the county of Delaware and State of New York, upon the faith and credit and in behalf of said town, for value received,
72 promise to pay to the bearer the sum of one thousand dollars on the first day of September (1901), nineteen hundred and one, at the American Exchange National Bank, in the city of New

York, with interest at seven per cent. per annum, payable semi-annually, on the first days of March and September in each year, at the same place, on the presentation and surrender of the coupons for such interest, hereto annexed.

"In witness whereof we have hereunto set our hands and seals and have caused the coupons hereto annexed to be signed by John Dickson, one of our number, this first day of September, in the year one thousand eight hundred and seventy-one.

"ANDREW ARMSTRONG. [L. S.]
"JOHN DICKSON. [L. S.]
"G. R. SHAFER. [L. S.]

"Registered in the county clerk's office of the county of Delaware.

"In witness whereof the clerk of said county has hereto set his hand and official seal.

"[L. S.] SMITH H. WHITE, *Clerk.*"

VII. That annexed to each of said bonds at the time of its execution and issue was a series of coupons, numbered, respectively, from one to sixty, inclusive, and signed by the said John Dickson, one of said commissioners, by the direction of said commissioners, whereby the said defendant promised and undertook to pay the interest on such bonds semi-annually, on the first days of March and September in each year, until the principal of said bonds should by the terms thereof become due and payable; that said coupons are substantially in form as follows:

"$35. The Town of Andes, county of Delaware, will pay the bearer hereof, at the American Exchange National Bank, in the city of New York, on the — day of ——, the sum of thirty-
73 five dollars for six months' interest then due on bond No. —.

"$35. "JOHN DICKSON,
"*Commissioner.*"

VIII. That thereafter the said commissioners so as aforesaid appointed and qualified did, in pursuance of said acts of the Legislature and conformably thereto, duly deliver and issue said bonds of the defendant at their par value to the said The Delhi and Middletown Railroad Company, a railroad corporation formed under the said act of the Legislature of the State of New York first above recited, and received in exchange therefor, as provided in said secondly above mentioned act of said Legislature, stock of said railroad company to an amount equal to the amount of said bonds at par, which said stock was duly delivered to and accepted by said defendant and has ever since been and still is held by said defendant or its assigns, and that the bonds and coupons so as aforesaid issued and delivered thereafter passed into the possession and became the property of the plaintiff herein in good faith and for a valuable consideration.

IX. That the semi-annual interest on said bond number 1, which became due on the first days of March and September, 1882, and the

first days of March and September, 1883, in all the sum of one hundred and forty dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of thirty-five dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was demanded and refused.

74 X. That the semi-annual interest on said bond number 2, which became due on the first days of March and September, 1882, and the first days of March and September, 1883, in all the sum of one hundred and forty dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of thirty-five dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

XI. That the semi-annual interest on said bond number 3, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of one hundred and forty dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of thirty-five dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

XII. That the semi-annual interest on said bond number 4, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of one hundred and forty dollars, has not been paid, nor have the said interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of thirty-five dollars

75 on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city New of York, and that payment thereof was there demanded and refused.

XIII. That the semi-annual interest on said bond number 5, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of one hundred and forty dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of thirty-five dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York and that payment thereof was there demanded and refused.

And the plaintiff, for a second cause of action, repeating the allegations contained in the paragraphs of this complaint numbered I to V, inclusive, further shows, upon information and belief—

XIV. That the said commissioners also, in accordance with said act of said Legislature secondly above set forth, duly executed the bonds of the said defendant, dated the first day of September, 1871, each of the denomination in amount of five hundred dollars, becoming due and payable at the expiration of thirty years from their date and bearing interest at the rate of seven per cent. per annum, payable semi-annually, on the first days of March and September in each year, and numbered, respectively, 14, 15, 17, 18, 19, 31,
76 35, 39, 40, 42, 43, 44, 45, 46, and substantially in form as follows:

No. —. $500.

UNITED STATES OF AMERICA,

State of New York, Town of Andes, County of Delaware.

Issued by virtue of an act of the Legislature of the State of New York entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April 2nd, 1850, and an act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April 2nd, 1850, so as to permit municipal corporations to aid in the construction of railroads, passed May 18th (1869), — sixty-nine, three-fifths being present.

These acts authorize any city or town, except in the counties of New York, Kings, Erie, Greene, Albany, Westchester, Ontario, Seneca, Yates, Onondaga, and Niagara, to subscribe to the stock of any railroad corporation formed in pursuance of said acts, and these acts authorize the Town of Andes to subscribe to the stock of the Delhi and Middletown Railroad Company, and to issue town bonds in payment thereof, all necessary and legal proceedings having been taken and had under said acts.

Know all men by these presents that we, the undersigned, commissioners under the above-entitled acts for the town of Andes, in the county of Delaware and State of New York, upon the faith and credit and in behalf of said town, for value received, promise to pay to the bearer the sum of five hundred dollars on the first day of September (1901), nineteen hundred and one, at the American
77 Exchange National Bank, in the city of New York, with interest at seven per cent. per annum, payable semi-annually, on the first days of March and September in each year, at the same place, on the presentation and surrender of the coupons for such interest hereto annexed.

In witness whereof we have hereunto set our hands and seals and have caused the coupons hereto annexed to be signed by John Dickson, one of our number, this first day of September, in the year one thousand eight hundred and seventy-one.

ANDREW ARMSTRONG. [L. S.]
G. R. SHAFER. [L. S.]
JOHN DICKSON. [L. S.]

Registered in the county clerk's office of the county of Delaware.

In witness whereof the clerk of the said county has hereto set his hand and official seal.

[L. S.] SMITH H. WHITE, *Clerk.*

XV. That annexed to each of said bonds at the time of its execution and issue was a series of coupons, numbered, respectively, from one to sixty, inclusive, and signed by John Dickson, one of said commissioners, by the direction of said commissioners, whereby the said defendant promised and undertook to pay the interest on such bonds semi-annually, on the said first days of March and September in each year, until the principal of said bonds should by the terms thereof become due and payable; that said coupons are substantially in form as follows:

"$17.50. The Town of Andes, county of Delaware, will pay the bearer hereof, at the American Exchange National Bank, in the city of New York, on the first day of ——, 18—, the sum of seventeen $\frac{50}{100}$ dollars for six months' interest then due on bond No. —.

"$17.50. JOHN DICKSON,
"*Commissioner.*"

78 XVI. That thereafter the said commissioners so as aforesaid appointed and qualified did, in pursuance of said acts of the said Legislature and conformably thereto, duly deliver and issue said bonds of the defendant at their par value to said The Delhi and Middletown Railroad Company, a railroad corporation formed under said act of the Legislature of the State of New York first above recited and received in exchange therefor, as provided in said secondly above mentioned act of said Legislature, stock of said railroad company to an amount equal to the amount of said bonds at par, which said stock was duly delivered to and accepted by said defendant, and has ever since been and still is held by said defendant or its assigns, and that the bonds and coupons so as aforesaid issued and delivered thereafter passed into the possession and became the property of the plaintiff herein in good faith and for a valuable consideration.

XVII. That the semi-annual interest on said bond number 14, which became due on the first days of March and September, 1882, and the first days of March and September, 1883, in all the sum of seventy dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

XVIII. That the semi-annual interest on said bond number 15, which became due on the first days of March and September,
79 1882, and the first days of March and September, 1883, in all the sum of seventy dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates,

to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

XIX. That the semi-annual interest on said bond number 17, which became due on the first days of March and September, 1882, and also that which became due on the first day of March and September, 1883, in all the sum of seventy dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

XX. That the semi-annual interest on said bond number 19, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of seventy dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded, which was refused.

80 XXI. That the semi-annual interest on said bond number 19, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of seventy dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was there demanded and refused.

XXII. That the semi-annual interest on said bond number 31, which became due on the first days of March and September, 1882, and the first days of March and September 1883, in all the sum of seventy dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant, promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was there demanded, which was refused

XXIII. That the semi-annual interest on said bond number 35, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of seventy dollars, has not been paid, nor have the interest coupons therefor, issued in manner

and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank,
81 in the city of New York, and that payment thereof was there demanded, which was refused.

XXIV. That the semi-annual interest on said bond number 39, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of seventy dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

XXV. That the semi-annual interest on said bond number 40, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of seventy dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

XXVI. That the semi-annual interest on said bond number 42, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of seventy dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dol-
82 lars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

XXVII. That the semi-annual interest on said bond number 43, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of seventy dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

XXVIII. That the semi-annual interest on said bond number 44, which became due on the first days of March and September,

1882, and also that which became due on the first days of March and September, 1883, in all the sum of seventy dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

XXIX. That the semi-annual interest on said bond number 45, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of seventy dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said
83 interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and payment thereof was there demanded and refused.

XXX. That the semi-annual interest on said bond number 46, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of seventy dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of seventeen $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

And, for a further and third cause of action, plaintiff, repeating the several allegations and paragraphs of this complaint numbered 1 to V, inclusive, further shows upon information and belief—

XXXI. That the said commissioners, in accordance with said act of said Legislature secondly above set forth, duly executed the bonds of the said defendant, dated the first day of September, 1871, each of the denomination in amount of one hundred dollars, by its terms becoming due and payable at the expiration of thirty years from their date and bearing interest at the rate of seven per cent.
84 per annum, payable semi-annually, on the first days of March and September in each year, and numbered, respectively, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 76, 77, 78, 79, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, and substantially in form as follows:

"No. —. $100.

"UNITED STATES OF AMERICA,

"*State of New York, Town of Andes, County of Delaware.*

"Issued by virtue of an act of the Legislature of the State of New

York entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April 2nd, 1850, and an act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April 2nd, 1850, so as to permit municipal corporations to aid in the construction of railroads, passed May 18th (1869), — sixty-nine, three-fifths being present.

"These acts authorize any city or town, except in the counties of New York, Kings, Erie, Greene, Albany, Westchester, Ontario, Seneca, Yates, Onondaga, and Niagara, to subscribe to the stock of any railroad corporation formed in pursuance of said acts, and these acts authorize the town of Andes to subscribe to the stock of the Delhi and Middletown Railroad Company and to issue town bonds in payment thereof, all necessary and legal proceedings having been taken and had under said acts.

"Know all men by these presents that we, the undersigned, commissioners under the above-entitled acts for the town of Andes, in the county of Delaware and State of New York, upon the faith
85 and credit and in behalf of said town, for value received, promise to pay to the bearer the sum of one hundred dollars on the first day of September (1901), nineteen hundred and one, at the American Exchange National Bank, in the city of New York, with interest at seven per cent. per annum, payable semi-annually, on the first days of March and September in each year, at the same place, on the presentation and surrender of the coupons for such interest, hereto annexed.

"In witness whereof we have hereunto set our hands and seals and have caused the coupons hereto annexed to be signed by John Dickson, one of our number, this first day of September, in the year one thousand eight hundred and seventy-one.

"JOHN DICKSON. [L. S.]
"G. R. SHAFER. [L. S.]
"ANDREW ARMSTRONG. [L. S.]

"Registered in the county clerk's office of the county of Delaware.

"In witness whereof the clerk of the said county has hereto set his hand and official seal.

"[L. S.] SMITH H. WHITE, *Clerk.*"

XXXII. That annexed to each of said bonds at the time of its execution and issue was a series of coupons, numbered, respectively, from one to sixty, inclusive, and signed by John Dickson, one of said commissioners, by the direction of said commissioners, whereby the said defendant promised and undertook to pay the said interest on such bonds semi-annually, on the first days of March and September in each year, until the principal of said bonds should by the terms thereof become due and payable; that said coupons are substantially in form as follows:

"$3.50. The Town of Andes, county of Delaware, will pay the bearer hereof, at the American Exchange National Bank, in

86 the city of New York, on the first day of ——, 18—, the sum of three $\frac{50}{100}$ dollars for six months' interest on said bond No. —.

"$3.50. JOHN DICKSON,
"*Commissioner.*"

XXXIII. That thereafter the said commissioners so as aforesaid appointed and qualified did, in pursuance of said acts of said Legislature and conformably thereto, duly deliver and issue said bonds of the defendant, at their par value, to said The Delhi and Middletown Railroad Company, a railroad corporation formed under said act of the Legislature of the State of New York first above recited, and received in exchange therefor, as provided in said secondly above mentioned act of said Legislature, stock of said company equal to the amount of said bonds at par, which stock was duly delivered to and accepted by said defendant and has ever since been and still is held by said defendant or its assigns, and that the bonds and coupons so as aforesaid issued and delivered thereafter passed into the possession and became the property of the plaintiff herein in good faith and for a valuable consideration.

XXXIV. That the semi-annual interest on said bond number 60, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of fourteen dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although the same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

87 XXXV. That the semi-annual interest on said bond number 61, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of fourteen dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although the same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

XXXVI. That the semi-annual interest on said bond number 62, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of fourteen dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the

city of New York, and that payment thereof was there demanded and refused.

XXXVII. That the semi-annual interest on said bond number 63, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of fourteen dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were
88 duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

XXXVIII. That the semi-annual interest on said bond number 64, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of fourteen dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

XXXIX. That the semi-annual interest on said bond number 65, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of fourteen dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

XL. That the semi-annual interest on said bond number 66, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of fourten dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said
89 interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

XLI. That the semi-annual interest on said bond number 67, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of fourteen dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay

said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

XLII. That the semi-annual interest on said bond number 68, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of fourteen dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

XLIII. That the semi-annual interest on said bond number 69, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and
September, 1883, in all the sum of fourteen dollars, has not
90 been paid, nor have the said interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

XLIV. That the semi-annual interest on said bond number 76, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of fourteen dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

XLV. That the semi-annual interest on said bond number 77, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of fourteen dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

XLVI. That the semi-annual interest on said bond number 78, which became due on the first days of March and September,
91 1882, and also that which became due on the first days of March and September, 1883, in all the sum of fourteen dol-

lars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

XLVII. That the semi-annual interest on said bond number 79, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of fourteen dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

XLVIII. That the semi-annual interest on said bond number 99, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of fourteen dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

92 XLIX. That the semi-annual interest on said bond number 100, which became due on the first days of March and September, 1882, and also that which became due on the first days of of March and September, 1883, in all the sum of fourteen dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

L. That the semi-annual interest on said bond number 101, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of fourteen dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

LI. That the semi-annual interest on said bond number 102, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of fourteen dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for pay-
93 ment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

LII. That the semi-annual interest on said bond number 103, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of fourteen dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

LIII. That the semi-annual interest on said bond number 104, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of fourteen dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

LIV. That the semi-annual interest on said bond number 105, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of fourteen dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said in-
94 terest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

LV. That the semi-annual interest on said bond number 106, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of fourteen dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at

said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

LVI. That the semi-annual interest on said bond number 107, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of fourteen dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

LVII. That the semi-annual interest on said bond number 108, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of fourteen dollars, has not been
95 paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

LVIII. That the semi-annual interest on said bond number 109, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of fourteen dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

LIX. That the semi-annual interest on said bond number 110, which became due on the first days of March and September, 1882, and also that which became due on the first days of March and September, 1883, in all the sum of fourteen dollars, has not been paid, nor have the interest coupons therefor, issued in manner and form aforesaid, whereby said defendant promised to pay said interest on said dates, to wit, the sum of three $\frac{50}{100}$ dollars on each of said dates, been paid, although same were duly presented for payment at said The American Exchange National Bank, in the city of New York, and that payment thereof was there demanded and refused.

LX. That the plaintiff, after the delivery and issue of the bonds aforesaid and before the commencement of this action, pur-
96 chased and became the owner of said bonds and coupons above recited, for value, and that he since has been and is now the lawful owner and holder of each of the same, and that there is now actually due thereon from the said defendant to this plaintiff the sum of two thousand and forty-four dollars, with interest on one hundred and seventy-five dollars from March 1st, 1882, and on one

hundred and seventy-five dollars from September 1st, 1882, and on one hundred and seventy-five dollars from March 1st, 1883, and on one hundred and seventy-five dollars from September 1st, 1883, and on two hundred and forty-five dollars from March 1st, 1882, and on two hundred and forty-five dollars from September 1st, 1882, and on two hundred and forty-five dollars from March 1st, 1883, and on two hundred and forty-five dollars from September 1st, 1883, and on ninety-one dollars from March 1st, 1882, and on ninety-one dollars from September 1st, 1882, and on ninety-one dollars from March 1st, 1883, and on ninety-one dollars from September 1st, 1883.

Wherefore plaintiff demands judgment against the defendant in said sum of two thousand and forty-four dollars, with interest as aforesaid, and the costs of this action.

ALBERT SLAUSON,
By MATTHEW DALY, *Att'y Pl'ff.*

DISTRICT OF NEW JERSEY, *ss:*

Albert Slauson, being duly sworn, saith that he is the plaintiff herein; that the foregoing complaint is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

ALBERT SLAUSON.

Sworn to before me this 6th day of December, 1883.
[L. S.] FLAVEL McGEE,
Notary Public of New Jersey.

(Indorsed:) Complaint. Filed Jan'y 17th, 1884.

97 *No.* 2. *Answer.*

U. S. Circuit Court, Northern Dist. of N. Y.

ALBERT SLAUSON *ag'st* THE TOWN OF ANDES. } No. 2513.

The above-named defendant, answering the complaint of the plaintiff in this action, admits that the defendant is a municipal corporation or town, duly created and existing under and by virtue of the laws of the State of New York, and was and is a town in the county of Delaware and in the northern district of New York.

First defense.

The defendant, further answering said complaint, denies that the defendant has any knowledge or information thereof sufficient to form a belief as to each and every of the allegations contained in said complaint, excepting the allegations hereinbefore admitted.

Second defense.

The defendant, further answering said complaint, as a further defense thereto, alleges, upon information and belief, that the plain-

tiff is not the real party in interest in this action; that the bonds, coupons, and obligations set forth in the complaint herein, if any such were ever issued, were, at the time of the commence-
98 ment of this action, in fact the property of and belonging wholly or in part to George H. Millard, the Hudson City Savings Institution, the Kingston National Bank of Kingston, N. Y., the Rondout Savings Bank, David Kennedy, Mrs. Columbus Van Deusen, James Stewart, Lyle Thompson, James M. Hastings, Sarah M. Phyfe, Elizabeth Hastings, John Phyfe, Mary Douglass, John R. Newrirk, Kate M. Campbell, Thomas Lee, William Gladstone, Thomas E. Hastings, Janette E. McMurdy, the Town of Delhi, and other persons and parties whose names are unknown to defendant, and all of whom are residents and citizens of the State of New York, and the said persons are each of them the real partys plaintiff in interest in this action, and this action is prosecuted in behalf and for the benefit of each of said persons.

Third defense.

The defendant, further answering said complaint and as a further defense thereto, alleges that at the time of the commencement of this action there was another action pending and undetermined in the supreme court, in the State of New York, commenced on or about January 1st, 1882, brought by Malcolm Calhoun and twenty-five other residents and tax-payers of the defendant town, pursuant to the laws of the State of New York, against the said George H. Millard, Hudson City Savings Institution, Kingston National Bank, Rondout Savings Bank, Mrs. Columbus Van Deusen, David Kennedy, James Stewart, the Town of Delhi, John R. Newrirk, Thomas E. Hastings, James M. Hastings, Elizabeth Hastings, Sarah M. Phyfe, John Phyfe, Lyle Thompson, Mary Douglass, Kate M. Campbell, Thomas Lee, Janette E. McMurdy, who were then the owners and holders of the bonds,
99 coupons, and obligations set forth in the complaint, if any such were ever issued, and against other persons proper parties thereto; the object of which action and the relief demanded therein was to restrain the said persons so holding and owning said bonds, coupons, and obligations from transferring the same and from enforcing and collecting them against and from the defendant in this action or the plaintiffs in said action or other tax-payers of the defendant, and to prevent the funds and property of the defendant from being wasted by being applied to the payment of the same or any part thereof; that it was alleged in the complaint in said action in substance that whatever bonds, coupons, or obligations of the tenor and effect set forth in the complaint herein had ever been issued were unlawfully issued and without authority of law and were null and void and were not valid or legal obligations of the defendant herein.

That said court in which said action was brought had jurisdiction thereof and of the subject-matters of said action and of all the parties thereto; that if the plaintiff has any of the bonds, coupons, or obligations set forth in the complaint at the time of the commencement of

this action they were transferred to him and taken and received by him during the pendency of the aforesaid action in the supreme court of the State of New York and without any consideration and for the purpose of avoiding and nullifying the effect of any judgment which the plaintiffs might recover in said action or the effect thereof and in violation of the laws and statutes of the State
100 of New York and of the United States and for the purpose of enabling plaintiff to bring an action in this court, and such transfer is and was void and conferred no title upon plaintiff to said bonds, coupons, and obligations; that the complaint in said action was duly filed in the clerk's office of the county of Delaware, N. Y., where said action was triable and where the property of the defendant affected thereby was situated; and at the time of filing said complaint a notice of the pendency of said action was duly filed, recorded, and indexed in said clerk's office pursuant to and as required by the laws of the State of New York, and that the plaintiff received said bonds, coupons, and obligations after the filing of said complaint and after the filing, recording, — indexing of said notice, and defendant alleges that the pendency of said action is a bar to plaintiff's right to maintain this action.

Wherefore defendant demands that the complaint of the plaintiff be dismissed, and that defendant have judgment therefor, with costs of this action.

THE TOWN OF ANDES, *Def't*,
By I. H. MAYNARD,
Att'y for Def't.

Office and P. O. address, Stamford, Del. Co., N. Y.

101 DELAWARE COUNTY, *ss:*

James Ballantine, being duly sworn, says that he resides at Andes, in said county, and is the supervisor of the Town of Andes, the defendant in this action; that he has heard the foregoing complaint read and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

JAMES BALLANTINE.

Sworn to before me this 4th day of April, 1884.
JAS. F. SCOTT,
Notary Public.

(Indorsed:) No. 2. U. S. circuit court, northern district of N. Y. Albert Slauson ag'st The Town of Andes. Copy. Answer. I. H. Maynard & C. M. Shaw, def't's att'ys, Stamford, N. Y. Filed Dec. 13, 1884.

102 United States Circuit Court, Northern District of New York.

ALBERT SLAUSON *ag't* THE TOWN OF ANDES. } No. 1.

ALBERT SLAUSON *ag't* THE TOWN OF ANDES. } No. 2.

It is hereby stipulated by and on the part of the Town of Andes, the def't in these actions, and I. H. Maynard, the present attorney upon the record for the said defendants in the same actions, that I. H. Maynard and C. M. Shaw, whose office and post-office address is Stamford, Delaware county, N. Y., be substituted as attorneys for the said defendant in these actions in the place of the said I. H. Maynard alone, and that the clerk of this court, upon filing this stipulation, may enter an order to that effect in this office.

Dated May 1, 1884.

TOWN OF ANDES, *Def't*,
By JAS. BALLANTINE,
Supervisor
I. H. MAYNARD,
Att'y for Def't.

103 STATE OF NEW YORK, *County of Delaware,* } *ss:*

On this 1st day of May, 1884, before me personally came James Ballentine, supervisor of the town of Andes, Delaware Co., N. Y., and Isaac H. Maynard, to me known to be the same persons described in and who executed the foregoing stipulation, and severally acknowledged that they executed the same.

CHAS. McPHAIE,
Notary Public.

(Indorsed:) U. S. circuit court, northern dist. of N. Y. Albert Slauson ag't The Town of Andes. 2512. Same ag't Same. No. 2513. Stipulation for substitution of def't. I. H. Maynard, att'y for def't, Stamford, Del. Co., N. Y. Filed May 27, 1884. Wm. S. Doolittle, clerk.

104 In the United States Circuit Court for Northern District of New York.

ALBERT SLAUSON *ag't* THE TOWN OF ANDES. } At Law. No. 2512.

ALBERT SLAUSON *ag't* THE TOWN OF ANDES. } At Law. No. 2513.

MAY 27TH, 1884.

Present: The Hon. Wm. J. Wallace, judge.

Upon reading and filing the stipulation and consent of the defend-

ant, The Town of Andes, in these actions, and of I. H. Maynard, the attorney for said defendant, ordered that I. H. Maynard and C. M. Shaw, whose office and post-office address is Stamford, Delaware county, N. Y., be, and they hereby are, substituted as attorneys for the said defendant, The Town of Andes, in each of these actions in the place and stead of the said I. H. Maynard, who has heretofore appeared as the attorney alone of said defendant therein.

(Indorsed:) U. S. circuit court, northern dist. of N. Y. Albert Slauson ag't The Town of Andes. Same ag't Same. No. 2. Order of substitution of atty's for deft. Filed May 27, 1884. Wm. S. Doolittle, clerk.

105 At a stated term of the circuit court of the United States of America for the northern district of New York, in the second circuit, held at Canandaigua, on the 18th day of June, A. D. 1884.

Present: The Honorable A. C. Coxe, judge.

ALBERT SLAUSON. *ag't* THE TOWN OF ANDES. } No. 2513.

ALBERT SLAUSON *ag't* THE TOWN OF ANDES. } No. 2512.

These actions having been each moved for trial on the part of the pl'ff therein at this term of court and application for a postponement having been made on behalf of defendant, it is now, at the suggestion of the court and by consent of parties, ordered that the said actions pass said term and be tried before Hon. A. C. Coxe, at his chambers at Utica, without a jury, with the same force and effect as if tried at a circuit term of this court, such trial to be had within two weeks after the first day of September next, at a time to be fixed by the judge, unless the parties shall agree; and if it shall appear to said judge upon such trial that there are questions of fact
106 arising upon the issues therein, the same are to be submitted to a jury at the November term, provided the said questions of fact are of such a character that the judge would submit them to a jury if one were present, and that no further notice of trial is required.

ALFRED C. COXE.

(Indorsed:) Law. No. 2512 & 2513. U. S. circuit court, northern district of New York. Slauson *vs.* Andes. Order. Jun. 18, 1884. Wm. S. Doolittle, clerk.

107 At a stated term of the U. S. circuit court, northern dist. of New York, held at Utica on Oct. 1st, 1884.

Present: Hon. A. C. Coxe, dist. judge, acting as circuit judge.

U. S. Circuit Court, Northern District of New York.

ALBERT SLAUSON *ag'st* THE TOWN OF ANDES. } Law. No. 2512.

ALBERT SLAUSON *ag'st* THE TOWN OF ANDES. } Law. No. 2513.

These two actions being at issue in this court & each having each been duly brought to trial & tried together by consent of the parties before Hon. A. C. Coxe, at his chambers at Utica, & a motion having been made by the defendant, The Town of Andes, upon such trial that these two actions be consolidated, & after hearing Mr. I. H. Maynard, of def't's counsel, for the motion, & Mr. J. B. Gleason, of pl'ff's counsel, in opposition thereto—

Ordered, That these two actions be, and hereby are, consolidated into one action without prejudice to the proceedings already had; that the statements of the several causes of action in the complaints stand as the complaint in the consolidated action, & the state-
108 of the defences in the answers stand as the answer herein, & that all subsequent proceedings be had in the action now consolidated.

ALFRED C. COXE.

(Indorsed:) Law. U. S. circuit court, northern dist. of New York. Albert Slauson ag'st The Town of Andes. Nos. 2512 & 2513. Order for consolidation of Nos. 2512 & 2513. Filed Nov. 15, 1884. Wm. S. Doolittle, clerk.

109 At a stated term of the circuit court of the United States for the northern district of New York, held at Utica, on October first, 1884.

Present: Hon. A. C. Coxe, judge.

ALBERT SLAUSEN *ag'st* THE TOWN OF ANDES, } Law. Nos. 2512 & 2513 Consolidated.

These two actions having been tried before the court without a jury, under the stipulation and order heretofore made and being now consolidated into one action by order duly entered, the court hereby makes a general finding for the plaintiff upon the facts and finds that in this action now consolidated there is due to the plaintiff, Albert Slauson, from the defendant, The Town of Andes, the sum of five thousand three hundred and sixteen & $\frac{46}{100}$ dollars (being the aggregate of the sums due in both actions at the day of trial, on Oct. 1, 1884, namely, in action number 2512, $3,047.62, and in action number 2513, $2,264.84), with interest from Oct. 1, 1884, and judgment is directed in favor of the plaintiff accordingly, with costs & disbursements.

ALFRED C. COXE.

(Indorsed:) U. S. circuit c't, northern dist. of New York. Albert Slauson ag'st The Town of Andes. Law. 2512 & 2513. Order for judgment, &c. Matthew Daly, pl'ff's att'y, 170 Broadway, New York city. Filed Dec. 4, 1884. Wm. S. Doolittle, clerk.

110 United States Circuit Court, Northern District of New York.

ALBERT SLAUSON *against* THE TOWN OF ANDES, } At Law. Nos. 2512 and 2513 Consolidated.

Two actions having been brought in this court by Albert Slauson, plaintiff, against The Town of Andes, defendant, and each having been duly noticed for trial at a stated term of said court held at Canandaigua, upon June 18th, 1884, and an order in both actions having been there entered upon the application of the defendant in each, and upon the stipulation of the parties that said actions be tried before the Hon. A. C. Coxe, at his chambers in Utica, without a jury, with the same force and effect as if tried at a circuit term of this court, and the said actions having been tried accordingly before the said judge, on the first day of October, 1884, and the court having filed its decision in both actions, whereby it finds that the plaintiff is entitled to recover in both actions and the two actions should be consolidated into one action and an order having thereupon been made and entered that said actions be consolidated into one action without prejudice to the proceedings already had, and the said two actions having been consolidated into this one action, and the court having thereupon filed its finding and order in this action, whereby it finds and decides that the plaintiff is entitled to judgment
111 against the defendant in the sum of five thousand three hundred and sixteen and $\frac{46}{100}$ dollars, etc., and the costs of the said plaintiff having been taxed at the sum of two hundred and sixty dollars and seventy cents:

Now, on motion of Matthew Daly, plaintiff's attorney, it is adjudged that the plaintiff, Albert Slauson, do recover of the defendant, The Town of Andes, the said sum of $5,316.46, with interest from the day of said trial, amounting to $64.68, together with the sum of $260.70 for said costs as taxed, amounting in the aggregate to the sum of fifty-six hundred forty-one dollars & eighty-four cents.

Judgment signed, entered, and docketed this 13th day of December, 1884, at one o'clock p. m.

W. S. DOOLITTLE, *Clerk.*

(Indorsed:) At law. No. 2513. United States circuit court, northern district of New York. Albert Slauson *versus* The Town of Andes. Enrolled judgment. Matthew Daly, pl'ff's att'y.

Damages	$5,316 46
Interest	64 68
Costs	260 70
Total	$5,641 84

Filed the 13th day of December, 1884, 1 o'clock p. m. W. S. Doolittle, clerk.

112 *Bill of Exceptions.*

Circuit Court of the United States, Northern District of New York.

ALBERT SLAUSON *ag'st* THE TOWN OF ANDES.

Two actions were originally brought by this plaintiff, claiming to be a resident of the State of New Jersey, against the defendant, a town of the county of Delaware, in the State of New York, to recover the sum of $5,316.46, the amount of coupons cut from bonds alleged to have been issued on the behalf of the defendant in aid of the construction of the Delhi and Middletown Railroad Company, including interest thereon.

The first action, numbered 2512, was commenced by the service of a summons Jan. 12th, 1884, and the complaint and answer therein will be found in the judgment-roll.

The second action, numbered 2513, was commenced by the service of a summons Jan. 17th, 1884, and the complaint and answer therein will be found in the judgment-roll.

The actions were duly noticed for trial at a circuit held at Canandaigua, N. Y., June 18th, 1884, at which circuit the defendant moved to put the trial of the causes over the circuit, upon which motion the court made the following order:

(A copy of the order will be found in the judgment-roll.)

Afterwards the actions were brought on for trial by the
113 plaintiff before Hon. A. C. Coxe, district judge of the northern district of New York, without a jury, at his chambers in the city of Utica, on the 1st day of October, 1884, Messrs. W. & J. B. Gleason appearing as attorneys for plaintiff and I. H. Maynard and C. M. Shaw as attorneys for the defendant, when the following proceedings were had:

It was stipulated between the parties in open court that the two actions of Albert Slauson against The Town of Andes should be tried together, and that the evidence so far as applicable to both actions shall be taken together.

The plaintiff put in evidence the law of the State of New York known as the general railroad act, passed April 2d, 1850.

The plaintiff then offered in evidence chap. 907 of the laws of 1869 of the State of New York amending the act of 1850.

The defendant objected thereto on the ground that such act did not appear to have been passed in conformity to the provisions of the constitution of the State relating to the passage of such enactments, in that it did not receive a two-third vote of all the members elected to each house of the State Legislature, but, on the contrary, it expressly appears that it did not receive such two-third vote.

Objection overruled and defendant excepted, and statute received in evidence.

Plaintiff then offered in evidence chapter 925 of the laws of 1871 of the State of New York.

114 Objected to on the same ground as last above, and also on the ground that it was immaterial, and that it was passed

after the initiation of the proceedings under which plaintiff seeks to recover.

Objection overruled and defendant excepted, and statute received in evidence.

Plaintiff then offered in evidence chapter 453 of the laws of 1874 and chapter 153 of the laws of 1875 of the State of New York; to which defendant objected upon the same ground, and upon the further ground that these acts were immaterial; which objections were overruled and defendant excepted, and the statutes were received in evidence.

Either party may, upon the argument of this cause in the Supreme Court of the United States, read the foregoing statutes and any part thereof and refer to the same as fully and with the like force and effect as if they had been set forth *verbatim* herein.

Plaintiff then offered in evidence a certificate of incorporation of the Delhi and Middletown Railway Company, filed Nov. 14th, 1870, in the office of the secretary of the State of New York, of which the following is a copy:

We, whose names are hereunto annexed, do hereby certify that we have associated together for the purpose of constructing a railroad in the country of Delaware and State of New York, to be called the Delhi and Middletown railroad, leading from the village of Delhi through the town of Bovina, near Livingston Lake and the town of Andes, to Arkville, in the town of Middletown, in said
115 county, a distance of about twenty-five miles; that the amount of the capital stock of the company is one million of dollars and is divided into 10,000 shares of one hundred dollars each, and that the following are the names and places of residence of the thirteen directors of said company:

Robert J. Livingston, New Brunswick, N. J.
Charles Hathaway, Delhi.
Henry Dowie and William B. Shaver, Andes.
Richard Morse, Andes.
Lemuel Sines, Middletown.
W. Ward Grant, Middletown.
Seth H. White, Delhi.
Alex. Storie, Bovina.
John Hilson, Bovina.
James H. Graham, Delhi.
George G. Decker, Middletown.
Thomas Cornell, Rondout.
The said company shall continue for one hundred years.
May 25th, 1870.

Names of subscribers.	Residence.	Amount of subscription.
Charles Hathaway	Delhi	Ten shares, $1,000.
W. Ward Grant	Middletown	Ten shares, 1,000.
Seth H. White	Delhi	Ten shares, 1,000.
J. H. Graham	Delhi	Ten shares, 1,000.
Thomas Cornell	Rondout	Thirty shares, 3,000.
W. Murray	Delhi	Ten shares, 1,000.
Robert J. Livingston	New Brunswick	Fifty shares, 5,000.
Richard Morse	Andes	Five shares, 500.
Lemuel Sines	Middletown	Ten shares, 1,000.
White Griswold	Walton	Thirty shares, 3,000.
S. D. Coykendall	Rondout	Ten shares, 1,000.
116 John Hilson	Bovina	Two shares, 200.
Robert M. Hanmer	Andes	One share, 100.
Butler Fitch	Delhi	One share, 100.
C. A. Foote and Dexter Pettinghill	Delhi	One share, 100.
John Bleakie		One share, 100.
Horace K. Thurber	N. Y. city	Ten shares, 1,000.
Edwin D. Wagner	Delhi	One share, 100.
H. England	Delhi	One share, 100.
Almiron Fitch	Delhi	One share, 100.
J. K. Wood	Andes	One share, 100.
W. B. Shafer	Andes	One share, 100.
F. V. Bishop	Andes	One share, 100.
Andrew McLean	Andes	One share, 100.
Adam T. Raitt	Andes	One share, 100.
Henry Dickson	Andes	One share, 100.
Henry Dickson	Andes	One share, 100.
Alonzo Ballard	Andes	One share, 100.
William Oliver	Andes	One share, 100.
Nelson Tompkins	Middletown	One share, 100,
Provided the road is located through Lumberville.		
W. W. Clark	Middletown	One share, 100.
E. J. Sanford	Middletown	One do., 100.
A. R. Henderson	Middletown	One do., 100.
G. G. Decker	Middletown	Two do., 200.
O. M. Allaben	Middletown	Five do., 500.
John Hamilton	Andes	Two do., 200.
Phœbe Bryant	Andes	One share, 100.
Marcus P. Bryant	Andes	One share, 100.
Thomas A. Miller	Andes	" " 100.
E. W. Bruce	Andes	" " 100.
R. O. Gladstone	Andes	" " 100.
Peter King	Andes	" " 100.
Andrew Hawver	Andes	Two shares, 200.

If the road goes by Shavertown—

A. A. Shaver	Andes	One share,	100.
James Jenkins	Andes	Two shares,	200.
Anson Jenkins	Andes	One share,	100.
O. E. Minor	Andes	One share,	100.
P. N. Bassett	Andes	One share,	100.
L. D. Jackson	Middletown	Five shares,	500.
John Whitney	Middletown	Two shares,	200.
John Gregory	Middletown	Three shares,	300.
L. G. Jenkins	Middletown	One share,	100.
Sam'l Gregory	Middletown	Two shares,	200.
Alex. Storie	Bovina	Two shares,	200.
Henry Dowie	Andes	One share,	100.
John McMurray	Delhi	Two shares,	200.

STATE OF NEW YORK, }
County of Delaware, } *ss:*

James H. Graham, Charles Hathaway, and Seth H. White,
117 being duly sworn, say and each for himself says that he is director named in the within articles of association, and that at least one thousand dollars of stock for every mile of railroad proposed to be made is subscribed thereto and ten per cent. paid thereon in good faith and in cash to the directors named in said articles of association; and deponents further say and each for himself further says that the amount of stock required by sec. two, title thirteen, chap. eighteen of the second volume of the Revised Statutes, fifth edition, part first, has been in good faith subscribed and ten per cent. paid in cash thereon as aforesaid, and that it is intended in good faith to construct and to maintain and operate the road mentioned in such articles of association.

JAMES H. GRAHAM.
SETH H. WHITE.
CHARLES HATHAWAY.

Sworn and subscribed before me this November 12th, 1870.
JONAS M. PRESTON,
Justice of the Peace.

(5c. Inter. Rev. stamp, cancelled.)

(Endorsed:) Articles of association of the Delhi & Middletown railroad. Filed Nov. 14th, 1870. D. Willers, Jr., dep. sec'y of state. Recorded in Book No. 3 of Railroad Corporations, in secretary's office, at page 474.

STATE OF NEW YORK, *ss:*

OFFICE OF THE SECRETARY OF STATE.

I have compared the preceding with the original articles
118 of association of the Delhi and Middletown railroad, with affidavit thereto annexed, filed and recorded in this office on

the fourteenth day of November, 1870, and hereby certify the same to be a correct transcript therefrom and of the whole of said original.

Witness my hand and seal of office, at the city of Albany, this eighteenth day of April, one thousand eight hundred and eighty-two.

[L. S.] JOSEPH B. CARR,
Secretary of State.

Defendant objected thereto upon the ground that it appears from the certificate that the statutory requirements were not complied with; which objection was overruled and defendant excepted, and the certificate was received in evidence.

Plaintiff then offered in evidence the map and profile of the Delhi and Middletown railroad, filed March 4th, 1871, in the office of the county clerk of Delaware county. The same was received in evidence, and a certified copy will be produced by the defendant upon the argument.

Plaintiff then offered in evidence a certified copy of a petition and heading, marked No. 7 on the back of it, and with the verification of James H. Davis also endorsed upon the back of it, of which the following is a copy:

119 To the county judge of Delaware county and State of New York:

We, the undersigned, tax-payers of the town of Andes, county of Delaware, and State of New York, being a majority of the tax-payers of said town whose names appear upon the last preceding tax-list or assessment-roll of said town as owning or representing a majority of the taxable property in the limits of said town, hereby make application to the county judge of said town by petition, and say that we are such a majority of tax-payers and represent such a majority of taxable property, and that we desire that such town shall create and issue its bonds to the amount of ninety-eight thousand dollars ($98,000), in accordance with the provisions of the act entitled "An act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," passed May eighteenth, 1869, three-fifths being present (said amount not to exceed twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll), and invest the same or the proceeds thereof in the stock of the Delhi and Middletown Railroad Company, an association formed in said county and State.

November 23d, 1870.

John Whitney. Alex. B. Douglas.
William R. Ackerly. her
Jno T. Haddow. Elizabeth x Barnhart.
Robert Fletcher. mark.
Wm. A. Haddow. In presence of C. Carman.

120

G. W. Shafer.	James Gray.
James Davis.	D. B. Shafer.
David Tuttel.	William R. Whitney.
Jane R. Robson.	James Neish.
John Fowler.	Hasbrouck Shafer.
James A. Shaver.	Jonah T. Hotchkiss.
Philip Allen.	Peter H. Shafer.
Lewis Bussey.	N. Y. Shafer.
Walter K. Miller.	Lewis Ticht.
J. J. Northrup.	Richard E. Hitt.
James Crosier.	John Carman.
George Doughrty.	Wm. Garrick.
Micaiah Corbin.*	John G. Cairns.
Jas. N. Scott.*	John Beckwith.
James Muir.	John Robson.
Miller and Laidlows.	George Potts.
W. C. Laing.	Robert McFarlane.
A. Campbell.	I. J. Hughes.
Mrs. Mary A. Bramley.	J. R. Newkirk.
Harrie Dowie, Jr.	

DELAWARE COUNTY, *ss:*

James H. Davis, being duly sworn, says that he is one of the petitioners mentioned in the foregoing application; that he has read the said application and knows the contents thereof, and that the same is true of his own knowledge, except the facts therein stated on information and belief, and as to those facts he believes it to be true.

JAMES H. DAVIS.

Sworn and subscribed before me this 6th day of May, 1871.

W. MURRAY, JR.,
Justice of Sup. Court.

(Endorsed:) No. 7. Filed May 6, 1871.

121 Defendant objected thereto upon the ground that it is only a part of the petition which is on the files of the Delaware county clerk's office; which objection was overruled and defendant excepted, and paper received and read in evidence.

A Copy of Petition Number 7.

Plaintiff then offered in evidence certified copies of papers with same heading, marked, respectively, Nos. 2, 3, 5, 6, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, and 19, of which the following are copies:

To the county judge of Delaware county and State of New York:

We, the undersigned, tax-payers of the town of Andes, county of Delaware, and State of New York, being a majority of the tax-payers

* Names marked above are unable to positively decipher, but think they are correct as written above; cannot say whether the middle letter in Scott's name is N. or R.

of said town whose names appear upon the last preceding tax-list or assessment-roll of said town as owning or representing a majority of the taxable property in the limits of said town, hereby make application to the county judge of said county by petition and say that we are such a majority of tax-payers and represent such a majority of taxable property, and that we desire that such town shall create and issue its bonds to the amount of ninety-eight thousand dollars ($98,000), in accordance with the provisions of the act entitled "An act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," passed May eighteenth, 1869, three-fifths being present (said amount not
122 to exceed twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll), and invest the same or the proceeds thereof in the stock of the Delhi and Middletown Railroad Company, an association formed in said county and State.

November 23d, 1870.

WILLIAM GOWANLOCK.
GEORGE K. GLADSTON.

(Endorsed:) No. 2. Filed May 6, 1871.

123 To the county judge of Delaware county and State of New York:

We, the undersigned, tax-payers of the town of Andes, county of Delaware, and State of New York, being a majority of the tax-payers of said town whose names appear upon the last preceding tax-list or assessment-roll of said town as owning or representing a majority of the taxable property in the limits of said town, hereby make application to the county judge of said county by petition and say that we are such a majority of tax-payers and represent such a majority of taxable property, and that we desire that such town shall create and issue its bonds to the amount of ninety-eight thousand dollars ($98,000), in accordance with the provisions of the act entitled "An act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," passed May eighteenth, 1869, three-fifths being present (said amount not to exceed twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll), and invest the same or the proceeds thereof in the stock of the Delhi and Middletown Railroad Company, an association formed in said county and State.

November 23d, 1870.

W. H. VAIL.
JOHN NEISH.

(Endorsed:) "No. 3. Filed May 6th, 1871."

To the county judge of Delaware county and State of New York:

We, the undersigned, tax-payers of the town of Andes, county of Delaware, and State of New York, being a majority of the tax-payers of said town whose names appear upon the last preceding tax-list or assessment-roll of said town as owning or representing a majority of the taxable property in the limits of said town, hereby make application to the county judge of said county by petition and say that we are such a majority of tax-payers and represent such a majority of taxable property, and that we desire that such town shall create and issue its bonds to the amount of ninety-eight thousand dollars ($98,000), in accordance with the provisions of the act entitled "An act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," passed May eighteenth, 1869, three-fifths being present (said amount not to exceed twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll), and invest the same or the proceeds thereof in the stock of the Delhi and Middletown Railroad Company, an association formed in said county and State.

November 23d, 1870.

ANDREW GLENDENING.
CALEB MONROE.
JOSHUA NORTHRUP.
ALMIRETTA LAIDLAW.

(Endorsed:) "No. 5. Filed May 6th, 1871."

124 To the county judge of Delaware county and State of New York:

We, the undersigned, tax-payers of the town of Andes, county of Delaware, and State of New York, being a majority of the tax-payers of said town whose names appear upon the last preceding tax-list or assessment-roll of said town as owning or representing a majority of the taxable property in the limits of said town, hereby make application to the county judge of said county by petition and say that we are such a majority of tax-payers and represent such a majority of taxable property, and that we desire that such town shall create and issue its bonds to the amount of ninety-eight thousand dollars ($98,000), in accordance with the provisions of the act entitled "An act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," passed May eighteenth, eighteen hundred and sixty-nine, three-fifths being present (said amount not to exceed twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll), and invest the same or the proceeds thereof in the stock of the Delhi

and Middletown Railroad Company, an association formed in said county and State.

November 23d, 1870.

R. M. Hanmer.
John Whitney.
Anthony Brower.
Walter Warren.
David G. Jenkins.
Jas. A. Huntley.
Henry Whitney.
John Gregory.
Anson Jenkins.
125 Albert Hitt.
George H. Van Steanburgh.
Samuel B. Shaver.
Leander Barnhart.
James Jenkins.
Thomas Hott.
A. J. Barnhart.
William H. Vanstenburgh.
Alonzo Jenkins.
his
Hyram x Jenkins.
mark.
Lewis Miner.
J. Edmund Samuels.
Samuel H. Reed.
Ab'm Mann.
Miles Warren.
Abram L. Van Steenburg.
An. Mekeel.

(Endorsed:) No. 6. Filed May 6, 1871.

To the county judge of Delaware county and State of New York:

We, the undersigned, tax-payers of the town of Andes, county of Delaware, and State of New York, being a majority of the tax-payers of said town whose names appear upon the last preceding tax-list or assessment roll of said town as owning or representing a majority of the taxable property in the limits of said town, hereby make application to the county judge of said county by petition and say that we are such a majority of tax-payers and represent such a majority of taxable property, and that we desire that such town shall create and issue its bonds to the amount of ninety-eight thousand dollars ($98,000), in accordance with the provisions of the act entitled "An act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," passed May eighteenth, 1869, three-fifths being present (said amount not to exceed twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll), and invest the same or the proceeds thereof in the stock of the Delhi and Middletown Rail-
126 road Company, an association formed in said county and State.

November 23d, 1870.

W. B. Shafer.
McCabe & Co.
Andrew A. Barnhart.
James M. Wilson.
L. D. Jackson.
Catherine Suttle.
James Seath.
L. Shafer.
Fitch & Shafer.
Mary Mungle.
Henry H. Jagger.
Godfrey Titch.
Edwin R. Russell.
Mathew Lambrecht.
Patiance Davis.
Henry S. Shafer.
H. Wilson.
Havley Russell.
Madison McFarland.
Madison Vandusen.
James M. Finkle.
John W. McCabe.

(Endorsed:) No. 8. Filed May 6, 1871.

127 To the county judge of Delaware county and State of New York:

We, the undersigned, tax-payers of the town of Andes, county of Delaware, and State of New York, being a majority of the tax-payers of said town whose names appear upon the last preceding tax-list or assessment-roll of said town as owning or representing a majority of the taxable property in the limits of said town, hereby make application to the county judge of said county by petition and say that we are such a majority of tax-payers and represent such a majority of taxable property, and that we desire that such town shall create and issue its bonds to the amount of ninety-eight thousand dollars ($98,000), in accordance with the provisions of the act entitled "An act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," passed May eighteenth, 1869, three-fifths being present (said amount not to exceed twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll), and invest the same or the proceeds thereof in the stock of the Delhi and Middletown Railroad Company, an association formed in said county and State.

November 23d, 1870.

Charles T. Shaver.
John A. Shaver.
his
Woolsey x Shaver.
mark
Lewis Knapp.*
Ezra Shafer.
Augustus Neidig.
James M. Shaver.*
John Craig.*
Malissa D. Sprague.
Elizabeth Barnhart.*

(Endorsed:) "No. 9. Filed May 6th, 1871."

128 To the county judge of Delaware county and State of New York:

We, the undersigned, tax-payers of the town of Andes, county of Delaware, and State of New York, being a majority of the tax-payers of said town whose names appear upon the last preceding tax-list or assessment-roll of said town as owning or representing a majority of the taxable property in the limits of said town, hereby make application to the county judge of said county by petition and say that we are such a majority of tax-payers and represent such a majority of taxable property, and that we desire that such town shall create and issue its bonds to the amount of ninety-eight thousand dollars ($98,000), in accordance with the provisions of the act entitled "An act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," passed May eighteenth, 1869, three-fifths being present (said amount not to exceed twenty per cent. of the whole amount of taxable property as shown by said tax-list

*These names indistinctly written, but think they are correct as written above.

and assessment-roll), and invest the same or the proceeds thereof in the stock of the Delhi and Middletown Railroad Company, an association formed in said county and State.

November 23d, 1870.

WM WHYTE.
ALEXANDER LAIDLAW.
JOHN GLADSTONE.

(Endorsed:) No. 10. Filed May 6, 1871.

129 To the county judge of Delaware county and State of New York:

We, the undersigned, tax-payers of the town of Andes, county of Delaware, and State of New York, being a majority of the tax-payers of said town whose names appear upon the last preceding tax-list or assessment-roll of said town as owning or representing a majority of the taxable property in the limits of said town, hereby make application to the county judge of said county by petition and say that we are such a majority of tax-payers and represent such a majority of taxable property, and that we desire that such town shall create and issue its bonds to the amount of ninety-eight thousand dollars ($98,000), in accordance with the provisions of the act entitled "An act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," passed May eighteenth, 1869, three-fifths being present (said amount not to exceed twenty per cent. of the whole amount of taxable property, as shown by said tax-list and assessment roll), and invest the same or the proceeds thereof in the stock of the Delhi and Middletown Railroad Company, an association formed in said county and State.

November 23d, 1870.

G. A. FRISBEE.
JOHN McNAIR.

(Endorsed:) No. 11. Filed May 6, 1871.

130 To the county judge of Delaware county and State of New York:

We, the undersigned, tax-payers of the town of Andes, county of Delaware, and State of New York, being a majority of the tax-payers of said town whose names appear upon the last preceeding tax-list or assessment-roll of said town as owning or representing a majority of the taxable property in the limits of said town, hereby make application to the county judge of said county by petition and say that we are such a majority of tax-payers and represent such a majority of taxable property, and that we desire that such town shall create and issue its bonds to the amount of ninety-eight thousand dollars ($98,000), in accordance with the provisions of the act entitled "An act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April second, eighteen hundred and fifty, so as to permit municipal corpo-

rations to aid in the construction of railroads," passed May eighteenth, 1869, three-fifths being present (said amount not to exceed twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll), and invest the same or the proceeds thereof in the stock of the Delhi and Middletown Railroad Company, an association formed in said county and State.

November 23rd, 1870.

	Richard Morse.	Andrew Haver.
	O. E. Miner.	Aaron A. Shaver.
	Arch'd Shaw.	S. D. Hilton.
	Chas. Carman.	James A. McNee.
	Wm. B. Shafer.	Bryson Bruce.
	F. V. Bishop.	Geo. N. Clinton.
	Anson Brace.	Richard Woolsey.
	Peter Dickson.	Charles Brace.
	Simon Jackson.	Henry Field.
131	Malcom Monroe.	Daniel Reynolds.
	Wm. Hilton.	A. E. Scutt.
	A. S. Dowie.	Samuels & Franklin.
	R. O. Gladstone.	Edwin Wooden.
	John E. Gladston.	Joseph Finkle.
	E. W. Brace.	J. D. Reynolds.
	Harriet Murphy.	A. T. Raitt.
	John Adee.	Abram Bussy.
	A. Hitt.	Townsend Shaver.
	A. McLean.	John Wood.
	Edward W. Shafer.	Isaac Samuel.
	Roderick Thomson.*	Robert Brisbane.
	Francis Heimer.	Thomas Liddle.
	William T. Alexander.	John Hogg.
	Samuel Davis.	John E. Liddle.
	Madison Hawver.	Matthew S. McCabe.
	Jehiel Race.	Lydia D. More.
	C. H. Tidel.	Alexander Grant.
	Henry Reid.*	Maretta Muir.
	Charles F. Laing.	James E. Brace.
	Andrew Jersey.	Joseph Murphy.
	Delos C. Shaver.	Thomas Taylor.
	Nelson Hutchins.	Luke Murphy.
	William Mungle.	Noah Davis, Jr.
	John C. King.	Peter McNair.
	Alex. Ferguson.	Ezra S. Dumond.
	R. H. Laing.	Calvin Madison.
	Robert Crosier.	Joseph B. Dreyfus.
	Jas. H. Washburn.	F. M. Parish.
	Wm. A. Hull.	Joseph Davies.
	Ira Hull.	George Ellet.
	C. Hull.	Janet Miller.

(Endorsed :) No. 12. Filed May 6, 1871.

* These names indistinctly written, but think they are correct as written above.

132 To the county judge of Delaware county and State of New York:

We, the undersigned, tax-payers of the town of Andes, county of Delaware, and State of New York, being a majority of the tax-payers of said town whose names appear upon the last preceding tax-list or assessment-roll of said town as owning or representing a majority of the taxable property in the limits of said town, hereby make application to the county judge of said county by petition and say that we are such a majority of tax-payers and represent such a majority of taxable property, and that we desire that such town shall create and issue its bonds to the amount of ninety-eight thousand dollars ($98,000), in accordance with the provisions of the act entitled "An act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," passed May eighteenth, 1869, three-fifths being present (said amount not to exceed twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll), and invest the same or the proceeds thereof in the stock of the Delhi and Middletown Railroad Company, an association formed in said county and State.

November 23d, 1870.

William Oliver.	H. G. Dowie.
H. H. Rotermond.	James Dickson.
John Dickson.	T. S. Miller.
Adam L. Cowan.	Elliott Graham.
John Jackson.	W. B. Dowie.
Peter G. Boyes.	Henry Dickson.

(Endorsed:) "No. 13. Filed May 6th, 1871."

133 To the county judge of Delaware county and State of New York:

We, the undersigned, tax-payers of the town of Andes, county of Delaware, and State of New York, being a majority of the tax-payers of said town whose names appear upon the last preceding tax-list or assessment-roll of said town as owning or representing a majority of the taxable property in the limits of said town, hereby make application to the county judge of said county by petition and say that we are such a majority of tax-payers and represent such a majority of taxable property, and that we desire that such town shall create and issue its bonds to the amount of ninety-eight thousand dollars ($98,000), in accordance with the provisions of the act entitled "An act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," passed May eighteenth, 1869, three-fifths being present (said amount not to exceed twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll), and invest the same or the proceeds

thereof in the stock of the Delhi and Middletown Railroad Company, an association formed in said county and State.

November 23d, 1870.

Isaac Fletcher.	*Henry Dowie.
John O. Liddel.	James A. Liddle.
Solomon Bussy.	P. N. Bassett.
Roderick Thomson.†	John Miller.
Alexander Liddle.	*J. O. Liddle.

(Endorsed:) "No. 15. Filed May 6th, 1871."

134 To the county judge of Delaware county and State of New York:

We, the undersigned, tax-payers of the town of Andes, county of Delaware, and State of New York, being a majority of the tax-payers of said town whose names appear upon the last preceding tax-list or assessment-roll of said town as owning or representing a majority of the taxable property in the limits of said town, hereby make application to the county judge of said county by petition and say that we are such a majority of tax-payers and represent such a majority of taxable property, and that we desire that such town shall create and issue its bonds to the amount of ninety-eight thousand dollars ($98,000), in accordance with the provisions of the act entitled "An act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," passed May eighteenth, 1869, three-fifths being present (said amount not to exceed twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll), and invest the same or the proceeds thereof in the stock of the Delhi and Middletown Railroad Company, an association formed in said county and State.

November 23d, 1870.

Peter King.	Daniel King.
James Reynolds.	David Clapperton.

(Endorsed:) "No. 16. Filed May 6th, 1871."

135 To the county judge of Delaware county and State of New York:

We, the undersigned, tax-payers of the town of Andes, county of Delaware, and State of New York, being a majority of the tax-payers of said town whose names appear upon the last preceding tax-list or assessment-roll of said town as owning or representing a majority of the taxable property in the limits of said town, hereby make application to the county judge of said county by petition and say that we are such a majority of tax-payers and represent such a majority of taxable property, and that we desire that such town shall

* The names above preceded by a star were written in pencil.

† Name marked thus we are unable to positively decipher, but think it is correct as written above.

create and issue its bonds to the amount of ninety-eight thousand dollars ($98,000), in accordance with the provisions of the act entitled "An act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," passed May eighteenth, 1869, three-fifths being present (said amount not to exceed twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll), and invest the same or the proceeds thereof in the stock of the Delhi and Middletown Railroad Company, an association formed in said county and State.

November 23d, 1870.

James Murdock.	Aaron Mekeel.
James B. Clayton.	James Reed.
E. R. Slater.	Alexander Shaver.
Daniel G. Barnhart.	P. Scudder.

(Endorsed:) "No. 17. Filed May 6th, 1871."

136 (The following letter was pinned to petition No. 17:)

GRIFFIN'S CORNER, *Jan'y 6th*, 1871.

Jas. Murdock, Esq'r.

DEAR SIR: In regard to bonding the town of Andes for a road I have no objections, as I was always in favor of improvement, but consider your estimate in the value of Lela place, if the road runs through, mere flattery. However, you can use my name if you choose.

Yours truly, P. SCUDDER.

To the county judge of Delaware county and State of New York:

We, the undersigned, tax-payers of the town of Andes, county of Delaware, and State of New York, being a majority of the tax-payers of said town whose names appear upon the last preceding tax-list or assessment-roll of said town as owning or representing a majority of the taxable property in the limits of said town, hereby make application to the county judge of said county by petition and say that we are such a majority of tax-payers and represent such a majority of taxable property, and that we desire that such town shall create and issue its bonds to the amount of ninety-eight thousand dollars ($98,000), in accordance with the provisions of the act entitled "An act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," passed May eighteenth, 1869, three-fifths being present (said amount not to exceed twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll), and invest the same or the proceeds thereof in the stock of the Delhi and

Middletown Railroad Company, an association formed in said county and State.

November 23d, 1870.

JAS. A. HUNTLEY.
his
JARVIS x MULENIX.
mark.
ADAM S. AKERLY.
THOMAS BURROW.

Witnesses:
JAS. A. HUNTLEY.
ABRAHAM BARNHART.
G. F. SUTTLE.
E. S. WASHBURN.

(Endorsed:) "No. 18. Filed May 6th, 1871."

137 To the county judge of Delaware county and State of New York:

We, the undersigned, tax-payers and inhabitants of the town of Andes, county of Delaware, and State of New York, being a majority of the tax-payers of said town whose names appear upon the last preceding tax-list or assessment-roll of said town as owning or representing a majority of the taxable property in the limits of said town, hereby make application to the county judge of said county by petition and say that we are such a majority of tax-payers and represent such a majority of taxable property, and that we desire that such town shall create and issue its bonds to the amount of ninety-eight thousand dollars ($98,000), in accordance with the provisions of the act entitled "An act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," passed May eighteenth, 1869, three-fifths being present, (said amount not to exceed twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll), and invest the same or the proceeds thereof in the stock of the Delhi and Middletown Railroad Company, an association formed in said county and State.

November 23d, 1870.

A. A. Grant.	Philip Ford.
*John Craig.	*David Craig.
*Peter King.‡	*M. Northrop.
*John Chrestenzen.	*John McGregor.
Esther Bassett.	*Jas. McNair.
J. K. Hood.	John T. Reynolds.
*Lucy A. Dowie.	David Burroughs.

(Endorsed:) "No. 19. Filed May 6th, 1871."

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*The names above preceded by a star were written in pencil.
‡Name marked thus was written in pencil and a line drawn through it.

138 To which the same objection was made and overruled, and defendant excepted, and papers received and read in evidence.

Plaintiff also offered in evidence certified copy of a notice "to whom it may concern," dated May 6th, 1871, under the hand of Edwin D. Wagner, county judge of Delaware county, and an order made by the same judge, dated May 6th, 1871, and proof of the publication of the notice endorsed filed May 22d, 1871; also the adjudication of the county judge, dated May 22d, 1871, the appointment of commissioners of the same date, and the oath of the commissioners, of which the following are copies:

To whom it may concern:

Notice is hereby given that a petition purporting to be signed by a majority of the tax-payers of the town of Andes, in the county of Delaware, representing a majority of the taxable property in the limits of said town, duly verified by one of the petitioners, has been filed in my office, and that I shall proceed, on the 22d day of May next, at 1 o'clock p. m., to take proof of the facts set forth in said petition as to the number of tax-payers joining in such petition and as to the amount of taxable property represented by them.

Given under my hand at Delhi, in said county, on the 6th day of May, 1871.

EDWIN D. WAGNER,
County Judge of Delaware County.

On reading and filing the annexed petition of a majority of the tax-payers of the town of Andes, Delaware county, representing a majority of the taxable property in the limits of said town, verified by James H. Davis, one of said petitioners, setting forth that they are such a majority of tax-payers and represent such a majority of taxable property, and that they desire said town of Andes shall create and issue its bonds to the amount of ninety-eight thousand dollars and invest the same or the proceeds thereof in the stock of the Delhi and Middletown Railroad Company, an association formed in said county and State:

Now, on motion of White & Jacobs, attorneys for said petitioners, ordered that a notice be forthwith published in the Andes Recorder, a newspaper published in said county, directed to whom it may concern, that on the 22d day of May, 1871, I shall proceed to take proof of the facts set forth in said petition as to the number of tax-payers joining in such petition and as to the amount of the taxable property represented by them.

Delhi, May 6th, 1871.

EDWIN D. WAGNER,
County Judge of Delaware County.

139 DELAWARE COUNTY, *ss:*

Bryson Bruce, of Andes, in said county, being duly sworn, says that he is editor, proprietor, and publisher of the Andes Recorder, a newspaper published in said town of Andes; that the annexed notice was first inserted and published in said paper on the 11th day of

May, 1871, and continued in said paper till the 22d inst.: that the said notice was published in said paper more than ten days before the 22d inst., the time appointed by the county judge to take proof, &c.

BRYSON BRUCE.

Sworn and subscribed before me this 22d day of May, 1871.

JAMES F. SCOTT,
Notary Public.

140 In the matter of the petition of a majority of the tax-payers of the town of Andes, representing a majority of the taxable property in the limits of said town, on an application to the county judge of Delaware county to create & issue its bonds to the amount of ninety-eight thousand dollars.

Whereas a majority of the tax-payers of the town of Andes, in the county of Delaware, representing a majority of the taxable property in the limits of said town, made application to me by a petition, verified by one of the petitioners, setting forth that they were such a majority of tax-payers & represent such a majority of taxable property, & that they desired that such town create & issue its bonds to the amount of ninety-eight thousand dollars; and whereas, on the 6th day of May, 1871, I issued an order that a notice be published in the Andes Recorder, a newspaper published in said town of Andes, setting forth that on the 22d day of May, 1871, I would proceed to take proof of the facts set forth in said petition as to the number of tax-payers joining in such petition & as to the taxable property represented by them; & whereas due proof having been made before me of the due publication of said notice more than ten days previous to this date; & whereas due proof as to the said allegations in said petition having been made before me, & it appearing satisfactory to me that the said petitioners do represent a majority of the tax-payers of said town of Andes, as shown by the last preceding tax-list or assessment-roll, & do represent a majority of the taxable property upon said list or roll, on motion of White & Jacobs, att'ys for petitioners, I do hereby adjudge & determine that said petitioners do represent a majority of the tax-payers of said town of Andes, Delaware county, as shown by the last preceding tax-list or assessment-roll, & do represent a majority of the taxable property upon said list or roll, & do hereby adjudge & determine that the same be entered of record.

Given under my hand at Delhi, in said county, on the 22d day of May, 1871.

EDWIN D. WAGNER,
County Judge of the County of Delaware.

Know all men by these presents that I, Edwin D. Wagner, county judge of Delaware county, in the State of New York, having determined that the petitioners of the town of Andes do represent a majority of the taxable property of said town & a majority of

141 the tax-payers of said town, have appointed & do hereby appoint Andrew Hawver & John Dickson & Andrew Armstrong, residents & freeholders in said town of Andes, commissioners for said town of Andes to carry into effect the provisions of an act entitled "An act to amend an act entitled An act to authorize the formation of railroad corporations & to regulate the same, passed April 2d, 1850, so as to permit municipal corporations to aid in the construction of railroads," passed May 18th, 1869, ⅔ being present, to issue bonds & take stock in the Delhi & Middletown railroad.

Witness my hand & seal this 22d day of May, 1871.

EDWIN D. WAGNER, [L. S.]
County Judge of Delaware County.

DELAWARE COUNTY, *ss:*

Andrew Hawver, John Dickson, and Andrew Armstrong, each being duly sworn, does each for himself say that he will support the Constitution of the United States and the constitution of the State of New York, and that he will faithfully discharge all the duties of the office of railroad commissioner for the town of Andes for the purpose of issuing bonds and taking stock in the Delhi & Middletown railroad.

ANDREW HAWVER.
ANDREW ARMSTRONG.
JOHN DICKSON.

Sworn and subscribed before me this 22d day of May, 1871.

EDWIN D. WAGNER,
County Judge of Delaware County.

Defendant objects to each of these papers upon the ground that it is not in compliance with the statute authorizing the county judge to entertain proceedings of this character, and that each is void and of no effect, and especially objected to the order and notice of the county judge for the hearing upon the further ground that no place for the hearing is specified therein; which objections were overruled and defendant excepted, and papers received in evidence.

Plaintiff then put in evidence transcript from the judgment book in Delaware county clerk's office, of which the following is a copy:

142 Against whom judgment is rendered: Town of Andes.
In whose favor judgment is rendered: In the matter of bonding the town of Andes for the Delhi & Middletown railroad.
Where perfected—court: Delaware Co.
Judgment: Damages & costs, 98,000.
When perfected: May 22d, 1871, 5 p. m.
Attorney or justice: White & Jacobs.
Delhi, N. Y., October 19th, 1885.

STATE OF NEW YORK, *Delaware County Clerk's Office:*

I do hereby certify that I have compared the foregoing transcript of the docket of a judgment docketed in this office with the original

docket thereof, and that the same is a correct transcript therefrom and of the whole of said original.

[L. S.] JAMES G. JESTER,
Deputy Clerk.

Also docket of judgment, of which the following is a copy:

In the matter of bonding the town of Andes for the Delhi and Middletown railroad. Entered in Delaware county clerk's office May 22, 1871, at 5 p. m., against the town of Andes for $98,000.

Also resignation of Andrew Hawver as commissioner, filed with the county judge of Delaware county prior to the appointment of Geo. R. Shaver.

143 Also certified copy of the appointment of George R. Shaver as commissioner in place of Hawver, and his oath of office, of which the following are copies:

In pursuance of an act of the Legislature passed May 18, 1869, and entitled "An act to amend an act entitled 'An act to authorize the formation of railroad corporations and to regulate the same,'" passed April 2d, 1850, so as to permit municipal corporations to aid in the construction of railroads, and of the acts amendatory thereto—

I, Edwin D. Wagner, county judge of the county of Delaware, do hereby appoint George R. Shaver, a freeholder and resident of the town of Andes, in the county of Delaware, to be a railroad commissioner for the said town of Andes for the unexpired term and to fill a vacancy occasioned by the resignation of Andrew Hawver, dated November 15, 1871, to carry into effect the purposes and provisions of said act and acts amendatory thereto.

Witness my hand and seal this 15th day of November, 1871.

EDWIN D. WAGNER, [L. S.]
County Judge of Delaware County.

(Endorsed:) Appointment of George R. Shaver R. R. commissioner. "Filed Nov. 15th, 1871."

Plaintiff then read in evidence the deposition of John Dickson, of which the following is a copy:

144 Depositions taken this 11th day of June, A. D. 1884, at Delhi, in the county of Delaware and State of New York, in each of the above-entitled actions, before Jonas M. Preston, a notary public in and for the county of Delaware and State of New York.

JOHN DICKSON, being duly sworn in each of said actions, doth depose and say:

I reside in Andes, and have pretty much all my life. I lived there in 1870 and 1871.

Question. Are you the same John Dickson mentioned in the order and appointment of Judge Wagner, dated May 22d, 1871, appointing you railroad commissioner of town of Andes?

Objected to on the ground that no order or appointment of the character specified has been produced or put in evidence, and it is not shown what order or appointment is referred to.

Answer. I am; yes, sir; and I acted as one of the railroad commissioners of the town of Andes. Andrew Hawver and Andrew Armstrong were my two associates appointed with me, and afterwards George R. Shaver acted with me in place of Andrew Hawver. I could not state positively when the commissioners first met; they were there the day the order was made by Judge Wagner appointing us, but did not meet that day as an organized body.

Book shown witness; says it is the book of minutes of the commissioners of the town of Andes.

145 Question. Did the commissioners subscribe the stock of the Delhi and Middletown Railroad Company for the sum of $98,000 in behalf of the town of Andes?

Objected to by defendant on the ground that it is not the best evidence, and no valid subscription could be made unless it was in writing, and the written evidence of the subscription should be produced; that the question also calls as to the conclusion of the witness as to his act and that of his co-commissioners.

Answer. I think we signed a paper to that effect.

Answer objected to—same ground as before.

I do not know where the paper is. I have not seen it since that time.

Plaintiff offers in evidence, on page 1 of commissioners' minutes, entry under date of August 19th, 1871; also entry immediately following.

Each entry objected to on the ground that the pretended record is not evidence against the defendant, The Town of Andes; that the witness and his co-commissioners were not officers nor agents of the town of Andes; that they were not required by any statute to make these entries; that there is no law nor statute that makes the entries evidence or of the acts of these commissioners, and the defendant especially objects to the recitals in these entries that the town of Andes was bonded.

Entries received and read as follows:

"August 19th, 1871.—The railroad commissioners met at Andes and organized by appointing Andrew Armstrong chairman and John Dickson clerk.

146 "The town of Andes declared bonded for the Delhi and Middletown railroad May 22d, 1871, for $98,000, and commissioners appointed, which were A. Hawver, Andrew Armstrong, and John Dickson, which subscribed for that amount of stock."

Question to witness: Was you authorized by the commissioners to sign the coupons to the bonds?

Objected to by defendant, that it does not call for the best evidence;

that parol authority would be absolutely void, and if written authority were given the writing would be the best evidence and should be produced; that the record of any such authority should be produced, and that his co-commissioners could not delegate to witness any such authority.

Answer. I was.

Question. Did the commissioners afterwards sign $98,000 of the bonds?

Objected to, that the question does not call for the best evidence; that the bonds themselves are the best evidence and should be produced.

Answered: I think they did. There were just $98,000 of blank bonds printed. The denominations were numbered from 1 to 300. There were 300 of the $100 bonds, there were 76 of $500 bonds, and 30 of $1,000 bonds. The $500 bonds were numbered from 1 to 76 and the $1,000 bonds from 1 to 30. I took all but $9,000 of the bonds to the county clerk's office to be registered. The $9,000 were sent there. I think I saw them at the clerk's office. Most all of the bonds were delivered to William Ward Grant and Thomas
147 Cornell. They were officers of the Delhi and Middletown Railroad Co. William Ward Grant was treasurer of the railroad company, and the bonds were delivered to him or as he directed. The last bonds were all delivered on December 10th, 1872. There was a meeting of the officers of the railroad company at Andes on December 17, 1872. They delivered to the commissioners the paper now shown witness.

Plaintiff offers the paper shown witness in evidence. Defendant objects to paper upon the ground that there is no evidence of its due execution.

Paper received, marked Pl'ff's Ex. "E."

At that time Wm. Ward Grant was acting as president of the company and S. H. White was the secretary and treasurer. After that time I acted as railroad commissioner of the town of Andes until they passed the law that the supervisor should act as railroad commissioner, and I acted as treasurer of the board.

In 1873 the commissioners received from James F. Scott, supervisor of the town of Andes, the sum of $5,000, and that money, with the money in the hands of the commissioners from the year before, made up the interest for the coupons for that year. The coupons for that year were paid.

In 1874 we made an arrangement with the cashier of the First National Bank of Andes to pay the coupons that year. The arrangement was that he was to take the money and pay the coupons. I believe the annual interest on the bonds were paid each year while I was commissioner, and the coupons were returned to the commissioners cancelled.

148 Cross-examined by ISAAC H. MAYNARD, for the defendant:

There was just a book containing $98,000 of blank bonds. They were printed in either the city of New York or Albany. I never signed any coupons myself. I do not think there was any written authority from my co-commissioners for me to sign the coupons to the bonds. The bonds were not signed by all three of the commissioners until we were ready to deliver them to Mr. Grant, and they were thus signed and delivered to Mr. Grant at the times and in the amounts specified in our book of minutes.

November 16th, 1871, we delivered 8 of the $500 bonds, numbered from 1 to 8, inclusive, and five of the $1,000 bonds, from 1 to 5, inclusive.

December 6th, 1871, we delivered to Mr. Grant 30 of the $100 bonds, from 1 to 30, inclusive; 20 of the $1,000, from 8 to 28, the latter inclusive, and 11 of the $1,000, from 5 to 16, the latter inclusive.

June 13th, 1872, we delivered to Mr. Grant 6 of the $500, from 28 to 34, the latter inclusive. We have no record of the number of the bonds after that that were issued, except on the stubs of the bond book. That book I have not in my possession. That book would show the dates of issue and number of the bonds. Whatever subscription we made to the stock of the company was in writing. I think it was a piece of paper we signed. It was not a subscription book. It was in Judge Wagner's office that we subscribed the paper. Mr. S. H. White had it there. At that time
149 James H. Graham was president of the company. When we subscribed to the stock Mr. Graham gave us a paper.

It is conceded that the following is a copy of the paper referred to:

It is hereby understood by and between Andrew Hawver, John Dickson, and Andrew Armstrong, commissioners of the town of Andes, and James H. Graham, president of the Delhi and Middletown railroad, that the bonds of the town of Andes and the avails of the same are only to be expended and used for the construction and equipment of said road in and through the town of Andes.

Dated Delhi, May 22d, 1869.

(Signed) ANDREW HAWVER,
ANDREW ARMSTRONG,
JOHN DICKSON,
Commissioners of the Town of Andes.
J. H. GRAHAM, *Pres.*

Defendant offers the above paper in evidence.

Objected to, first, as irrelevant and immaterial; second, that the understanding of the parties as to whether moneys on the sale of these bonds were to be expended could not effect the rights of the parties to whom they were sold. Received.

The date is a mistake. It should be 1871 instead of 1869.

I do not think that was the only paper I signed that day in

Judge Wagner's office. I think I signed another paper, but am not positive. I never paid any interest directly on these
150 bonds. The Delhi and Middletown Railroad Company was to run from Arkville or Deans to Delhi, through the towns of Middletown, Andes, Bovina, and Delhi.

Question. So far as you know, Andes is the only town that has issued bonds for the road?

Objected to as immaterial.

Answer. Yes, sir.

Question. Has this road ever been constructed and operated through the town of Andes?

Objected to as irrelevant and immaterial.

Answer. No, sir, and no part of the road has ever been operated.

Last objected to by plaintiff.

Answer. No, sir; neither myself nor my co-commissioners ever received any money on account of the sale of any of these bonds. On the 20th of November, 1871, none of these bonds had been signed by the three commissioners, except $9,000.

Question. Did the commissioners refuse to issue any bonds unless the railroad company would guarantee that the proceeds of the bonds should be used in constructing and equipping the road in the town of Andes.

Objected to as irrelevant and immaterial and no proof of any agreement, and as above.

Answer. Yes. Mr. George E. Martin afterwards was president of the company.

151 Question. Did he refuse to carry out this agreement with reference to the expenditure of the proceeds of the bonds in the town of Andes?

Objected to, first, as irrelevant and immaterial; 2nd, that there is no evidence of any such agreement; 3d, that the rights of purchasers of the bonds could not be affected by any agreement between the office of the company and the commissioners.

Answer. He refused to carry out the agreement as to the expenditure of the proceeds of the bonds in the town of Andes.

Redirect:

I think there were 60 coupons on each bond. My name was lithographed on each coupon. I filled in the coupons—the number of the bond. There was some grading on this road done in the town of Andes at different places.

JOHN DICKSON.

Subscribed and sworn to before me this 11th day of June, A. D. 1884.

JONAS M. PRESTON,
Notary Public in and for Delaware County, New York.

152 Defendant objected to that portion of the evidence relating to the payment of principal and interest of the bonds on the ground that it is immaterial; that if the bonds were originally void they could not be validated by any act of the town in the payment of interest.

The COURT: That question must be considered later.

Plaintiff then offered in evidence a transcript of the certificate of registry of the bonds in the clerk's office of the county of Delaware, recorded Dec. 1st, 1871, of which the following is a copy:

"DELAWARE COUNTY CLERK'S OFFICE, *ss*:

"I, Smith H. White, clerk of said county, do hereby certify that, in pursuance of the provisions of the statute in such case made and provided, I have this day completed the registry of bonds of the town of Andes, in said county, amounting in the aggregate to the sum of ninety-eight thousand dollars (98,000), issued and to be issued by the railroad commissioners of said town of Andes in aid of the Delhi and Middletown Railroad Company; that said bonds were presented to me (the said clerk) for registry by John Dickson, one of said railroad commissioners; that the number and denominations and amounts of said bonds are respectively as follows, viz: The whole number of said bonds is four hundred and six (406), of which three hundred (300) of said bonds were each of the denomination and amount of one hundred dollars ($100); seventy-six (76) of said bonds were each of the denomination and amount of five hundred dollars ($500); thirty (30) of said bonds were each of the denomination and amount of one thousand dollars ($1,000);

153 that each and every of the above-mentioned bonds are what are commonly called and known as coupon bonds and bear date of September 1st, 1871, payable on the 1st day of September, 1901, at the American Exchange National Bank, of the city of New York, with interest, semi-annually, at the rate of seven per cent. per annum, for which interest sixty interest coupons are attached to each of said bonds; that the person designated in said bonds as authorized by said commissioners to sign the coupons attached thereto is John Dickson, who is one of said commissioners.

"In testimony whereof I have hereunto set my hand and official seal this 30th day of November, 1871.

"[L. S.] SMITH H. WHITE,
"*County Clerk of Delaware County.*

"Endorsed as follows: Certificate of registry of bonds of the town of Andes. Recorded in Delaware county clerk's office December 1st, 1871, in Liber one of Miscellaneous Records, on page 6, &c. Smith H. White, clerk. Filed December 1st, 1871."

Objected to by defendant upon the ground that it was unauthorized; that such bond was not registered; which objection was overruled and defendant excepted, and certificate received in evidence.

Plaintiff then read in evidence the deposition of Seth H. White, of which the following is a copy:

154 SETH H. WHITE, called and sworn for the plaintiff, says:

I reside in Delhi, and did in 1871, and was the secretary of the Delhi and Middletown Railroad Company from its organization. I was one of the directors of the company, and was present at a meeting of the board of directors March 2d, 1871. I have in my hands the book of minutes of the Delhi and Middletown Railroad Company. There is an entry in that book under the head of March 2d, 1871.

Plaintiff offers the entry in evidence.

Objected to as improper against defendant; not shown to have been made by witness; not in his handwriting; not properly authenticated; not signed by any officer of the company.

Entry reads:

"ANDES, *March 2d*, 1871.

At a meeting of the directors, held at the hotel of F. V. Bishop, in Andes—present, Thomas Cornell, James H. Graham, Judge Hathaway, G. G. Decker, Alex. Stories, W. B. Shafer, John Hilson, Lemuel Sines, W. W. Grant, Henry Dowie, S. H. White, R. Morse.

Report of engineer read.

Resolved, That the board of directors of the Delhi and Middletown railroad adopt the Tremperskill and Fish Lake or Southern route, and do hereby locate their road on said route.

Adjourned till the call of the president.

That resolution was passed at that meeting.

I am familiar with the country over which the line of the
155 road extends. I have seen the map and profile filed Mar. 4, 1871.

Question. Did that map locate the road by Lumberville and Shavertown and by Andes village, and by Fish Lake?

Objected to on the ground that it calls for the conclusion of the witness as to the location of the road; that the map is the best evidence.

Answer. It does.

Question. State whether there was a change made the next year and what the change was.

Objected to on the ground that it is not the best evidence.

Answer. It was changed from one side of the river to the other, between Lumberville and Shavertown. I was at the office of the county judge of Delaware county on May 22d, 1871. The county judge had a public office at the court-house, in Delhi. James H. Davis was there before the county judge. I know that at that time he was a tax-payer of the town of Andes. He is the one who made an affidavit on the back of one of the petitions.

Question. Was evidence offered before the county judge?

Objected to on the ground that the record of the proceeding before the county judge is the best evidence of what occurred there.

Answer. There was evidence taken. The tax-roll of the town of Andes of the previous year was put in evidence. An order was made by the county judge, and commissioners appointed. The three persons appointed commissioners were present in Delhi.

156 Question. After they were appointed did they subscribe for $98,000 of the stock of the Delhi and Middletown railroad?

Objected to, that it is not the best evidence; that the record of the subscription should be produced.

Answer. They did so subscribe for $98,000 of the stock. The subscription was in writing. I had it. It is not in my possession. It was either in the subscription book or on a paper. I think they subscribed where other subscribers did, but I would not be positive about that.

Witness looks at Plaintiff's Ex. "E," J. M. P.

That is my signature: S. H. White, secretary and treasurer; and the signature W. Ward Grant, president, is the genuine signature, W. Ward Grant, and that is the certificate that was delivered to the commissioners of town of Andes. The certificate reads as follows:

"Shares of $100 each.

"Delhi and Middletown Co. (Seal.)

"STATE OF NEW YORK.

"No. 8. Delhi and Middletown Railroad Company. Shares, 980.

"This is to certify that the Town of Andes, Del. Co., N. Y., is entitled to nine hundred & eighty shares in the capital stock of the Delhi and Middletown Railroad Co., transferable only on the books of the company, in person or by attorney, on surrender of this certificate.

"Delhi, N. Y., Dec. 17th, 1872.

"S. H. WHITE,

157 "*Secretary and Treasurer.*

"W. WARD GRANT, *President.*"

The railroad company done a large amount of work on this road. The company spent considerable over $200,000 on the whole line.

Question. How much of the whole amount expended was expended in the town of Andes, to the best of your recollection?

Answer. Nearly half.

Cross-examined by Mr. MAYNARD:

I was director, on the executive committee, and secretary and treasurer, and White & Jacobs were attorneys for the company.

Question. As attorneys for the company you had the principal charge of these bonding proceedings, so called?

Objected to as irrelevant and immaterial.

Answer. I presume so. We were attorneys in the case and did the business. The papers that are attached together that were pre-

sented by the clerk are in my handwriting, except the signatures. I charged the railroad company for a good many services. Whether I did in this particular matter or not, do not now remember. The charges of White & Jacobs are in the register. I have a book of my own that has my charges against the company.

The above evidence objected to as immaterial and improper. Defendant asks the witness to produce his book.

158 I did not keep any minutes of the witnesses sworn before Judge Wagner; witnesses were sworn.

Question. What witnesses were sworn?

Objected to as irrelevant and immaterial.

Answer. I do not recollect who was sworn. Mr. Davis was there.

Question. Who did the work in the town of Andes?

Objected to as irrelevant and immaterial.

Answer. Mr. Boice and Mr. Woolven. I do not know when work was commenced on the road. The company did not commence working on the line between Lumberville to Shavertown until after the change in the location between Lumberville and Shavertown. I don't know exactly where the change of the line of the road extended. It was changed from Lumberville to Shavertown. I do not know that there was any work done on the road in the town of Andes before May 1st, 1872, when the line was changed. I think Thomas Cornell built the Union Grove bridge after Boice, Wolven & Co. stopped work under their contract. With the exception of the Union Grove bridge, I do not know of any work being done in the town of Andes, except that was done by Boice, Wolven & Co.

Defendant offers in evidence a resolution adopted at a directors' meeting held at Andes April 18th, 1872, which reads as follows:

"Resolved, That the executive committee be authorized to let the construction of the Delhi and Middletown railroad, in pursuance of the resolution of the board passed March 21st, 1872,
159 to Messrs. Boice, Wolven & Brown, of Olive, on such terms and conditions as in their judgment will best subserve the best interests of the company.

Objected to, 1st, as irrelevant and immaterial; 2d, that the rights of the purchasers of the bonds cannot be affected by such transactions of the company; and, 3d, that the town is estopped by the payment of the interest on the bonds from disputing their validity.

The line of the road as delineated on the map is a mile or two out from Andes village.

Redirect:

From the winter of 1871–'72 down to 1883, I was a private banker, doing business in Delhi village, which is about 13 miles from Andes village.

Question. Do you know of certain of these bonds being bought and sold on the market, down to 1882, at par?

Objected to as immaterial:

Answer. Yes; the interest was paid on these bonds down to about 1882.

Recross-examined:

I bought some bonds of a man by the name of Phyfe, in Andes. I sold some 70,000 of these bonds. I sold good many of these bonds for the company at 90 cents on a dollar.

Redirect:

These that were sold for 90 cents was in the early part of the work.

SETH H. WHITE.

Sworn to and subscribed before me this 11th day of June, 1884, at Delhi, in said northern district of New York.

JONAS M. PRESTON,
Notary Public in and for Delaware County, New York.

160 The question, "Was evidence taken before the county judge?" and the answer thereto was objected to by defendant, and the objection sustained. The question, "Do you know of certain of these bonds being bought and sold on the market down to 1882?" was also objected to by defendant, and objection overruled, and defendant excepted.

Plaintiff then put in evidence the report of James Ballantine, supervisor for 1881, and resolution of the board of supervisors of Delaware county, of which the following is a copy:

Andes.

A tabular statement of the public debt of the town of Andes, Delaware county, N. Y.

The public debt of the town of Andes is ninety-five thousand ($95,000) dollars, in the form of coupon bonds of the denomination of one thousand ($1,000) five, hundred ($500), and one hundred ($100) dollars, with interest at the rate of 7 per cent., payable semi-annually, on the first days of March and September of each year.

Said bonds were issued by the railroad commissioners of the town of Andes by virtue of an act passed April 2d, 1869, and acts amendatory thereof. The amount unpaid at the time of my election was ninety-five thousand dollars, none of which will mature during the ensuing year. The amount of interest maturing during the ensuing year is six thousand six hundred and fifty dollars ($6,650), for which a tax has been levied and assessed against the real and
161 personal property of said town.

Dated November 10, 1881.

JAMES BALLANTINE,
Supervisor.

On motion of Mr. Ballantine, the sum of $6,650, to pay the interest upon the railroad bonded debt of the town of Andes, was levied on said town.

On motion of Mr. Gleason, the board adjourned until nine o'clock Thursday morning.

All of which was objected to by defendant upon the ground that the supervisor could not by such report or resolution bind the town; which objection was overruled, and defendant excepted, and the same was received in evidence.

Subject to same objection and exception, the record of the proceedings of said board of supervisors for 1880 were put in evidence, showing a similar resolution adopted on motion of the supervisor of Andes, and a similar report by him of the public debt of the town; also the record of the proceedings of same board in each year, from 1872 to 1879, inclusive, showing that the amount necessary to pay the interest was annually levied upon the taxable property of the town, and that in each year the supervisor of the town presented a report and certificate of the railroad commissioners of the town certifying the sum necessary to pay the interest falling due in each year.

The plaintiff then put in evidence the deposition of Albert Slauson, of which the following is a copy:

162 *Albert Slauson.*

I am a citizen of the United States of America; my age is 72 years last May; my residence is Jersey City, New Jersey, and my occupation is that of a confectioner, or, rather, in the confectionery business. I am a member of the firm of A. Slauson & Co.

Q. Are you the owner of the coupons set forth in the complaint in these actions?

Objected to on the ground that any legal transfer of these bonds and coupons to the witness must have been made in writing and the writing is the best evidence as to its effect.

A. I am the owner. Those coupons are those set forth in the complaint in action No. 2512, as follows, to wit: The coupons Nos. 21, 22, and 23, which were annexed to bonds 21, 22, 23, 26, 27, and 30.

Coupons offered in evidence and marked Pl'ff's Exhibit No. 1.

Objected to on the ground that they are not shown to be the property of the plaintiff, and that they are not admissible as against the defendant, and they are not proven to be valid and legal obligations of the defendant.

It is admitted that said coupons are each of the amount of thirty-five dollars and same are correctly set out, as to form, in paragraphs 7 and 8 of the complaint in action 2512, excepting number and date.

Plaintiff offers for identification coupons Nos. 21, 22, 23,
163 which were attached to bonds Nos. 32, 48, 50, 51, 57, 58, 59, 60, 61, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73.

The same objection as before.

It is admitted that these coupons are correctly set out, as to form, in paragraphs XVI and XVII of the complaint, except as to their number and date of payment.

Q. Are you the owner of these coupons?

Objected to as not the best evidence.

A. I am.

The same offered in evidence and marked "Pl'ff's Exhibit No. 2, June 12, 1884, T. P."

Plaintiff offers for identification coupons Nos. 21, 22, and 23, for $3.50 each, which were attached to bonds numbered 31, 32, 71, 72, 73, 74, 75, 81, 82, 83, 84, 85, 86, 90, 91, 92, 93, 94, 95, 96, 97, 98, 157, 158, 159, 160, 161, 162, 163, 164, 166, 167, 169, 171, 172, 175, 176, 177, 178, 179, 180, 181, 183, 188, 189, 190, 194, 202, 204, 207, 208, 209, 211, 212, 214, 215, 218, 219, 220, 224, 228, 233, 234, 236, 238, 241, 242, 243, 244, 246, 247, 248, 249, 250, 252, 254, 257, 258, 259, 260, 261, 262, 264, 265, 267, 268, 269, 270, 274, 277, 278, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300.

Objected to the same as before.

It is admitted that said coupons are correctly set forth, as to form, in paragraphs XXVI and XL of said complaint.

The said coupons are marked together Pl'ff's Exhibit No.
164 3, June 12, 1884, T. P.

Q. Are you the owner of these coupons?

Objected to as not calling for the best evidence.

A. I am.

Plaintiff offers for identification bonds Nos. 1, 2, 3, 4, 5, for one thousand dollars each.

Objected to on the ground that there is no evidence that plaintiff is the owner of said bonds and entitled to collect the same, and that they are not valid and legal obligations of the defendant nor admissible as against defendant.

Marked "Pl'ff's Exhibits, respectively, Nos. 4, 5, 6, 7, 8, June 12, 1884, T. P."

Q. Are you the owner of these bonds?

Objected to on the ground that the question does not call for the best evidence.

A. I am.

Q. In whose possession are they?

Objected to as immaterial, irrelevant, and improper.

A. In my possession.

The said bonds are offered in evidence.

Objected to as before.

Plaintiff offers for identification coupons Nos. 21, 22, 23, 24, for thirty-five dollars each, which were attached to said bond No. 1; also coupons Nos. 21, 22, 23, 24, which were attached to said bond No. 2, for same amount; also coupons Nos. 21, 22, 23, and 24,
165 which were attached to said bond No. 3, for same amount; also coupons Nos. 21, 22, 23, and 24, which allude to said bond No. 5, for same amount.

Objected to the same as to bond.

Q. Are you the owner of these coupons?

Objected to as not calling for the best evidence.

A. I am.

Q. In whose possession are these coupons?

Objected to as immaterial and irrelevant.

A. In mine.

The same marked in evidence together "Pl'ff's Exhibit No. 9, June 12, 1884, T. P."

The plaintiff offers for identification bonds for $500 each, Nos. 14, 15, 17, 18, 19, 31, 35, 39, 40, 42, 43, 44, 45, and 46.

Objected to same as to bonds previously mentioned.

Q. Are you the owner of these bonds?

Objected to as before.

A. I am.

Q. In whose possession are they?

Objected to as before.

A. In mine.

Bond offered in evidence and marked Pl'ff's Exhibits Nos. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23, June 12, 1884, T. P.

Objected to same as previous bonds.

Plaintiff offers for identification coupons, which were attached to each of said bonds and numbered 21, 22, 23, and 24, for $17.50 each.

166 Q. Who is the owner of these coupons?

Objected to as before.

A. I am.

Q. In whose possession are they?

Objected to as before.

A. In mine.

The same are together offered in evidence and marked Pl'ff's Exhibits No. 24, June 12, 1884, T. P.

The same objections as to coupons previously offered.

Plaintiff offers for identification bonds for $100 each, Nos. 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 76, 77, 78, 79, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, and 110.

Q. Are you the owner of these bonds?

Objected to as not calling for the best evidence.

A. I am.
Q. In whose possession are they?

Objected to as immaterial and irrelevant.

A. In mine.

Said bonds offered in evidence and marked, respectively, Pl'ff's Exhibits Nos. 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 50, June 12, 1884, T. P.

Same objection as to bonds previously offered.

Plaintiff offers for identification four coupons, which were attached to each of said bonds Nos. 21, 22, 23, and 24, and together marked Pl'ff's Exhibit No. 51, June 12, 1884, T. P.

167 Q. Are you the owner of these coupons?

Objected to as before.

A. I am.
Q. In whose possession are they?

Objected to as before.

A. In mine.

Q. Were you present when all the coupons referred to and concerning which you have testified were cut from the bonds to which they were attached?
A. I was not present at the cutting off of all of them.
Q. Of what State are you a citizen?
A. Of the State of New Jersey.

Coupons last offered for identification now offered in evidence and together marked "Pl'ff's Exhibit No. 51, June 12, 1884, T. P."

Same objection as to coupons previously offered.

Q. From whom did you receive these coupons and the bonds set out in the complaint in action No. 2513?
A. From Anthony Benson.
Q. When did you receive them from him?
A. The first lot of them about the sixth or seventh day of April, 1882, and the rest of them a few days later. The exact time I do not remember.
Q. At or about the time you received them, did you receive any papers from Mr. Benson relating to them?
A. None, except the two papers which I now produce.

The same offered in evidence and marked Pl'ff's Exhibits Nos. 52 and 53, respectively, June 12, 1884, T. P.

168 Q. Did you give any consideration for these bonds and coupons?

A. I gave my notes for them. One note was payable to the order of the Rondout Savings Bank, for $9,000 and the accrued interest; one note was payable to the order of David Kennedy, for $2,000 and accrued interest; one to the order of A. Benson, for $2,100 and accrued interest, and one to the order of Mrs. Harriet Van Deusen, for $1,500 and accrued interest. Then, for the coupons in suit No. 2512, I gave my note for the sum of $2,709, I think, to the order of A. Benson.

All this testimony objected to on the ground that the notes are the best evidence as to their contents.

These notes were all made payable on demand, with interest at six per cent.

Same objection.

Q. Are you a man of means, Mr. Slauson?

A. I have some, sir. I am able to meet all my debts and liabilities, including the amount of these notes.

Q. Have these bonds or coupons ever been paid?

A. No, sir.

It is consented that the examination, direct and cross, of Mr. Slauson, this day taken before John W. West, is to be taken as part of his cross-examination here.

Cross-examination continued:

Q. I understand you to say, Mr. Slauson, that the bonds mentioned in the complaint in action No. 2512 were never delivered to you?

169 A. No, sir; I never bought the bonds. I only bought certain coupons thereon.

Q. But the bonds mentioned and described in action No. 2513 you did buy?

A. I did. They were delivered to me by Mr. Benson. They were not assigned to me by any persons. They were transferred to me by delivery. I have no written assignment of them by any person. I am not aware that I ever at any time made any inquiry of Mr. Benson or any other person concerning the validity of these bonds or the collectibility of these coupons. I do not remember that at the time Mr. Benson informed me that these bonds were valid or the coupons collectible, and at the time of their delivery to me I had no knowledge as to their validity or collectibility. The Van Deusen bonds are indorsed by Mrs. Van Deusen, as executrix.

Redirect:

Q. When you took these bonds and coupons did you believe them to be valid and collectible?

Objected to as irrelevant and immaterial.

A. Yes; I believed them to be so.

Q. You did receive from Mr. Benson all the bonds set out in action No. 2513 and all the coupons set out in both of these actions?

A. I did. All the bonds and coupons referred to in my testimony are the same which are set out in the complaints in these two actions.

A. SLAUSON.

Sworn and subscribed to before me this 12th day of June, 1884.

THOMAS PROCTOR,
Notary Public, New York and Kings Counties.

170 With this deposition the plaintiff also offered the coupons referred to therein and described in the complaint in No. 2513, to wit:

103 coupons of $3.50 each, falling due March 1st, 1882, a copy of which is set forth in the complaint.

103 coupons of same number and amount except date of payment, which is Sept. 1st, 1882, and 103 coupons of same number and amount except date of payment, which is March 1st, 1883.

Also 19 coupons numbered, respectively, 32, 48, 50, 51, 57, 58, 59, 60, 61, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, of $17.50 each, falling due March 1st, 1882, a copy of which is set forth in the complaint.

19 coupons of same number and amount except date of payment, which is Sept. 1st, 1882, and 19 coupons of same number and amount except date of payment, which is March 1, 1883.

Also 6c oupons numbered, respectively, 21, 22, 23, 26, 27, and 30, of $35.00 each, falling due March 1, 1882, a copy of which is set forth in the complaint.

6 coupons of same number and amount except date of payment, which is Sept. 1, 1882, and 6 coupons of same number and amount except date of payment, which is March 1, 1883.

Each of these coupons were objected to by defendant when offered upon the ground that the bond itself should be produced; that the coupon is a part of the bond and inseparable from it, and no recovery can be had upon the coupon unless the bond itself is produced; which objection was overruled and defendant excepted, and the coupons received in evidence.

171 Plaintiff put in evidence the deposition of Thomas Proctor, of which the following is a copy:

THOMAS PROCTOR, a witness called on behalf of the above-named plaintiff:

Q. What is your name, age, residence, and occupation?

A. My name is Thomas Proctor; aged forty years; reside in city of Brooklyn and State of New York; occupation, attorney and counselor at law; I am a notary public in and for the counties of Kings and New York, in the State of New York.

Q. Did you present for payment the coupons set out in the complaints in these two actions; if so, when, where, and to whom?

Objected to as immaterial — irrelevant.

A. I did; to the American Exchange National Bank, in suit No. 2513, on the 6th day of December, 1883, at No. 128 Broadway, in the city of New York, and demanded payment — the said coupons from the paying-teller of said bank and also, by direction of said paying-teller, from a person behind the desk in said bank, called the coupon clerk, and by both of said persons the payment of said coupons was refused.

Also, on or about 17th December, 1883, I presented for payment, at the American Exchange National Bank, No. 128 Broadway, New York city, the coupons mentioned in the complaint in suit No. 2512 and demanded payment of them from the paying-teller of said bank and he refused payment thereof, and then at the same time, by his direction, I also demanded payment of said coupons from a person in said bank, called the coupon clerk, and he refused payment thereof.

172 THOMAS PROCTOR.

Subscribed and sworn to before me this 12th day of June, 1884.

CHARLES H. YOUNG,
Notary Public, Westchester Co.

Certificate filed in New York county.

Defendant objected to the evidence contained in this deposition on the ground that it is not the proper method of proving a protest; which objection was overruled and defendant excepted.

Plaintiff put in evidence the deposition of Samuel R. Rainey, of which the following is a copy:

(*Vide supra*, page 251.)

173 It is admitted that the coupons set out in the complaint in action 2513 were attached to the bonds transferred to Hoysradt.

The plaintiff put in evidence the bonds specified in the complaint in No. 2512, consisting of five $1,000 bonds, numbered, respectively, 1, 2, 3, 4, 5, and the same in form and manner of execution as the copy $1,000 bond set forth in the complaint; fourteen $500 bonds, numbered, respectively, 14, 15, 17, 18, 19, 31, 35, 39, 40, 42, 43, 44, 45, 46, and the same in form and manner of execution as the copy $500 bond set forth in the complaint, and twenty-six $100 bonds, numbered, respectively, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 76, 77, 78, 79, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, and 110, and the same in form and manner of execution as the copy $100 bond set forth in the complaint.

Upon these bonds there appeared the following endorsement, in the handwriting of Columbus Van Deusen: Upon bonds Nos. 1, 2, 3, 4, 5, 14, 15, 17, 18, 43, 44, 45, 46, 110, 61, 64, 77: "This bond is owned by Columbus Van Deusen, and can only be transferred by my endorsement," and below which was "Harriet J. Van Deusen, executrix of Columbus Van Deusen, deceased, Feb. 22, 1882," in the handwriting of the said Harriet J. Van Deusen. Upon bonds Nos. 19, 79, 60, 62, 63, 76: "This bond is owned by Columbus Van Deusen

and can only be transferred by my endorsement," (signed) Columbus Van Deusen; below which was the following:

174 "For value received I hereby sell, assign, and set over to bearer all my right, title, and interest in the within bond.
"(Signed) COLUMBUS VAN DEUSEN."

And upon bond No. 78 the following, in the handwriting of Columbus Van Deusen: "This bond is owned by Columbus Van Deusen, and can only be transferred by my endorsement."

Each of said bonds upon which appears the endorsement "Harriet J. Van Deusen, executrix of Columbus Van Deusen, deceased," has attached thereto a certificate, of which the following is a copy:

STATE OF NEW YORK, }
Ulster County, Surrogate's Office, } ss:

I, Alton B. Parker, surrogate of said county of Ulster, do hereby certify that on the 18th day of January, 1881, at the city of Kingston, in said county, letters testamentary upon the last will and testament of Columbus Van Deusen, late of the city of Kingston, in said county, deceased, were duly granted and issued by the surrogate of said county to Harriet J. Van Deusen, of the city of Kingston, Ulster county, N. Y., and that the same are still valid and in full force.

In testimony whereof I have hereto set my hand and affixed the seal of the surrogate's court of said county this 28th day of February, 1882.

[L. S.] ALTON B. PARKER, *Surrogate.*

175 Of these bonds the following had no seals thereon, to wit, Nos. 42, 43, 44, 45, and 46, of $500 each.

Defendant objected to the introduction of the bonds in evidence having endorsements thereon, upon the ground that by such endorsements they were made non-negotiable and plaintiff could derive no title thereto by delivery, and also to coupons attached to such bonds upon the sameground; which objection was overruled, and defendant excepted.

Plaintiff also put in evidence the coupons attached to these bonds, falling due March 1 and Sept. 1, 1882, and March 1 and Sept. 1st, 1883, to wit, fifteen coupons of $35 each, forty-two coupons of $17.50, and seventy-eight coupons of $3.50 each, which coupons are the same in form and manner of execution as those of the same amounts, respectively, set forth in the complaint.

Plaintiff also put in evidence the certificate of stock issued by the Delhi and Middletown Railroad Company to the town of Andes, of which the following is a copy:

176 Shares, $100 each.

STATE OF NEW YORK.

Delhi & Middletown Railroad Co.

Number 8. Shares, 980.

[Seal Delhi & Middletown Railroad Co. Stamp.]

This is to certify that the Town of Andes, Del. Co., N. Y., is entitled to nine hundred & eighty shares in the capital stock of the Delhi & Middletown Railroad Co, transferable only on the books of the company, in person or by attorney, on the surrender of this certificate.

Delhi, N. Y., Dec. 17th, 1872.

W. WARD GRANT,
President.

S. H. WHITE,
Sec'y & Treasurer.

177 Plaintiff also put in evidence deposition of George E. Marvine, of which the following is a copy:

GEORGE E. MARVINE, being sworn on the part of plaintiff, says:

I was the president of the Delhi and Middletown Railroad Company during a portion of the year 1872. I received some of the books of the company and have them in my possession now; have the book of minutes and some other papers. I have searched the papers to find the subscription paper to the capital stock of the Delhi and Middletown Railroad Company; have looked through all of the papers; made diligent search to find it and have been unable to find it; do not remember of ever having the subscription paper in my possession. I think that I saw the subscription paper to the capital stock of the company when I was an officer of the company; am positive that I saw it then. I do not know where said subscription paper is now.

G. E. MARVINE.

Subscribed and sworn to before me this 21st day of October, 1884, at Delhi, in the northern district of New York.

JONAS M. PRESTON,
Notary Public in and for Delaware County, State of New York.

Also supplemental deposition of Seth H. White, of which the following is a copy:

178 SETH H. WHITE, sworn for plaintiff, says:

I was secretary of the Delhi and Middletown Railroad Company during the whole time of its organization. I always had charge of the books and papers of the company. I delivered to Mr. Marvine, president of the company, such papers as he wanted. I refer to George E. Marvine. I never delivered any papers to any other person. Among the papers which I had was a subscription to the

capital stock of the Delhi and Middletown Railroad Company. I have recently made diligent search among the papers in my possession for the subscription paper to the capital stock of that company. I am not able to find it. I don't recollect seeing it for some years. The subscription, as near as I can recollect, was an ordinary subscription to the capital stock of the company, signed by different subscribers. On May 22d, 1871, I saw John Dickson, Andrew Armstrong, and Andrew Hawver sign the subscription paper. They signed it, as commissioners of the town of Andes, for the sum of $98,000. I saw the paper frequently after that. It was on a sheet of paper. I have no knowledge where it is now.

S. H. WHITE.

Subscribed and sworn to at Delhi, in said northern district of New York, the 21st day of October, A. D. 1884.

JONAS M. PRESTON,
Notary Public in and for Delaware County, State of New York.

179 Plaintiff also put in evidence statement of computation of amount of coupons due and interest thereon, showing that the total amount in No. 2512 was $2,268.84 and in No. 2513 was $3,047.62, making a total in both cases of $5,316.46, which statement was received with the same force and effect as if testified to orally in open court.

The plaintiff then rested.

The defendant then made a motion to consolidate the two actions into one action, which motion was entertained and heard by the court and the decision therefor reserved; but before the conclusion of the trial the motion was granted and the actions consolidated into one action.

Defendant then put in evidence the deposition of George T. Warner, of which the following is a copy:

180 GEORGE T. WARNER, being called and sworn in each of the foregoing-entitled actions, doth say:

The plaintiff offers in evidence the articles of association and incorporation of the Delhi and Middletown Railroad Company.

Objected to on the ground that the papers do not show upon their face a compliance with the provisions of the statute in reference to incorporation of such companies, and also that the papers are not properly authenticated.

Received, marked Pl'ff's Ex. 1, J. M. P.

Question to witness. Are you the county clerk of Delaware county?

Answer. Yes, sir. The map and profile of the Delhi and Middletown Railroad Company is on file in the Delaware county clerk's office. I have that map with me. It was filed March 4th, 1871.

Question. Will you read the certificate written upon the map?

Objected to upon the ground that it is improper; that the certifi-

cate itself is the best evidence of its contents, and has not been put in evidence.

Answer. Map of the Delhi and Middletown Railroad, scale, 400 feet per inch; J. P. Gould, ch'f eng'r; profile attached.

We, the undersigned, being the president and chief engineer of The Delhi and Middletown Railroad Company, do hereby
181 certify that this is a correct map and profile of the route intended to be adopted by said company for their road, connecting with the Rondout and Oswego railroad on the lands of J. H. Dean, in the town of Middletown, and extending to the village of Delhi, all in the county of Delaware, State of New York.

J. H. GRAHAM,
President.
J. P. GOULD,
Chief Engineer.

Endorsed: Filed Mar. 4, 1871.

Map further endorsed: Map and profile of the Delhi and Middletown railroad.

When I first saw the map there was one roll inside the other. There are two rolls. One of them is filed May 1st, 1872; the other, Mar. 4, 1871. The one filed May 1st, 1872, is marked Delhi and Middletown railroad; "Map of the location from Lumberville to Shavertown." The map filed Mar. 4, 1871, is a very large map. I have examined that map.

Question. Do you find Lumberville on that map?

Objected to on the ground that the witness has no knowledge of the correctness of the map, and as to the contents of it the map is the best evidence.

Answer. I find Lumberville on the map. I find Shavertown on the map and squares marked on the map. I find the words "opposite Andes village" on the map. I find Fish lake delineated on the map, and the railroad is represented as running past these places I find on the map. I have examined in my office for the papers in reference to the bonding of the town of Andes and have the originals before me. I find a number of papers in a larger paper, endorsed filed May 22d, 1871, 5 p. m. There are 19 separate papers.
182 (Certified copies shown witness.) These papers are certified copies and examined by me.

Pl'ff offers papers from 1 to 19 in evidence, marked from 1 to 19, J. M. P.

Paper shown witness; says it is a certified copy of the roll in this matter, marked Pl'ff's Ex. 20, J. M. P.

Pl'ff offers in evidence a certified copy of the appointment of George R. Shaver as railroad commissioner in the place of Andrew Hawver, marked 21, J. M. P.

Also offers a certified copy of the oath of office of George R. Shaver.

Objected to on the ground that the oath has no venue and is a nullity.

Marked 22, J. M. P.

I have the judgment book of the county of Delaware. It is as follows: Under the heading Names of Parties, "In the matter of bonding the town of Andes, Del. Co., for the Delhi and Middletown R. R. Under the head Determination of Action, order of county judge. Under the head of Damages, $98,000. Nothing under the head of Costs. Under the head of Rolls, when filed, 1871, May 22d, 5 p. m. Under the head of Attorneys, White & Jacobs. That book is the only judgment book of Delaware county for that year.

Question. Are there other determinations entered there in the same manner?

Objected to as immaterial and improper.

Answer. Yes, sir; I find this entered in the same manner.

Plaintiff offers in evidence a transcript of the docket.

183 Transcript received, marked Plaintiff's Exhibit No. 23, J. M. P.

Cross-examined by Mr. MAYNARD:

This roll of map, marked Map of Location from Lumberville to Shavertown, is filed May 1st, 1872, and the larger map is filed Mar. 4, 1871, and when I first saw these maps, which was 8 or 9 years ago, the smaller map was rolled inside the larger map. I do not know in whose handwriting the filing, May 1st, 1872, is.

Witness looks upon larger map and states that he finds opposite William H. Dickson the following: "Line is changed from here to Shavertown. See amendment on file and a star indicating the point."

(Witness looks upon large map.) The map indicates that the line of the railroad all the way from Lumberville to Shavertown is the northerly side of the river.

Witness looks at smaller map, filed May 1st, 1872; says the line of the road on this map extends all the way from Lumberville to Union Grove, on the easterly side of the river, and then crosses the river; the bend begins between stations 6.52 and 6.64, and on large map between stations 6.67 and 6.76. On the smaller map between stations 408 & 468 is in the town of Middletown. The corresponding portions of the road on the large map are between stations 412 and 470, and that portion is in the town of Andes. There is no certificate upon the small map.

The petitions to which I refer are numbered from 1 to 19,

184 inclusive, and Nos. are in the handwriting of Mr. Wm. W. Grant. The words, filed May 6th, 1871, are in Judge Wagner's handwriting. These petitions have never been attached together, to my knowledge. When I first saw them in the county clerk's office there was nothing on them that would lead me to suppose that they had ever been fastened together. The body of the hand-

writing on the other papers is in Seth H. White's handwriting. They are filed May 22d, 1871, 5 p. m., in Ransom A. Grant's handwriting. He was then deputy clerk. These petitions have never been recorded. This order of Judge Wagner's has never been entered; none of the orders have. I have been in the county clerk's office 8 years and know what a judgment book is, and this book shown witness——

Question. Is this book a judgment book?

Answer. It is not what we would call a judgment book now. There is nothing more in it than what is kept in a judgment docket book.

I have the custody of the books containing the minutes of the Delaware April special term. It is not here, but is being used to keep the minutes of the circuit court now in session.

The witness now produces the book and defendant offers in evidence the minutes of the trial of the case of Malcom Calhoun and others against George H. Millard and others, a certified copy of which is marked Defendant's Exhibit No. 1.

Objected to as irrelevant and immaterial.

Received.

185 Question. Have you papers on file in this case?

Answer. Yes, sir.

Defendant offers in evidence the original summons, complaint, affidavits, undertaking, and injunction order, filed January, 1882.

Objected to as irrelevant and immaterial.

A certified copy produced and marked Defendant's Exhibit No. 2.

It is here conceded that an amended complaint in said action was made and filed February 23d, 1882.

Pl'ffs object to the evidence as before.

Defendant asks the witness to produce a notice of pendency of the above-mentioned action, filed ——, 1882; same produced, and certified copy marked Defendant's Exhibit No. 3.

Objected to as before.

It is conceded, subject to the same objection, that a motion was made to vacate the injunction order, which was heard and granted, and an order entered in the Delaware county clerk's office April 6th, 1882, vacating said injunction.

I have never seen any profile with the small map; never have seen any in the clerk's office.

It is conceded that the stock put in evidence was cut off by a judgment and sale under a foreclosure of a mortgage executed by the railroad company in 1872; that the judgment of foreclosure
186 was entered September 18th, 1881, and the sale had December 10th, 1881, and the proceeds of the sale were insufficient to pay the bonds and nothing was realized for the stockholders, and the title of the town of Andes to the stock was extinguished and no one has redeemed on behalf of the stockholders.

The plaintiff concedes the facts to be as above stated, but objects to any evidence upon that subject as immaterial.

All the papers produced by the witness Warner here may be read from the printed papers in the Craig and Calhoun cases, so far as they are printed therein, and certified copies dispensed with.

(Witness resumed:) It is about eight miles from Lumberville to Shavertown. Both of these maps the line runs between Lumberville and Shavertown; on one map on one side of the river and on the other map on the other side.

Recross-examined:

I know where the work on the line has been done. It does not run within a mile from Shavertown.

GEORGE T. WARNER.

Subscribed and sworn to before me at Delhi, in the northern district of New York, the 11th day of June, A. D. 1884.

JONAS M. PRESTON,
Notary Public in and for Delaware County, State of New York.

187 Also certified copy of papers on file in the clerk's office of Delaware county, referred to in the deposition and marked Nos. 1, 4, and 14, of which the following are copies:

To the county judge of Delaware county and State of New York:

We, the undersigned, tax-payers of the town of Andes, county of Delaware, and State of New York, being a majority of the tax-payers of said town, whose names appear upon the last preceding tax-list or assessment-roll of said town as owning or representing a majority of the taxable property in the limits of said town, hereby make application to the county judge of said county by petition and say that we are such a majority of tax-payers and representing such a majority of taxable property, and that we desire that such town shall create and issue its bonds to the amount of ninety-eight thousand dollars ($98,000), in accordance with the provisions of the act entitled "An act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the
188 same, passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," passed May eighteenth, 1869, three-fifths being present (said amount not to exceed twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll), and invest the same or the proceeds thereof in the stock of the Delhi and Middletown Railroad Company, an association formed in said county and State, on condition that said road is located by Fish Lake and Shavertown.

November 23d, 1870.

George Shaw.
John D. Imrie.
Adam Sutherland.
G. R. Shafer.
Noah B. Hamilton.
James Whitson.

James Marshall.
John McGibbon.
James P. King.
Arch'd McNaught.
Andrew Anderson.
John Holmes.
William Rickleton.
Benjamin Hunt.
W. D. Wickham.
Aaron Scudder,
Pr. W. W. Grant.
Patrick Carroll.
S. G. Akerley.
Edward Carroll.
John McLean.
John H. Worden.
Wm. Scott.
John Bramblee.
Nicholas Lambrecht.
Walter Armstrong.
F. C. Reside.
Alex. McQueen.
Mary x Akerly.
Catharine Race.
Samuel Gregory.
John McNair.
Robert McNair.
Thomas H. Liddle.
Robert Bleakie.
Sylvester Gavett.

Estate of Alexander More, by Elizabeth More.
Estate of Nathaniel Burtch, dec'd, by Mrs. Mary Keator.

(Endorsed:) No. 1. Filed May 6, 1871.

189 To the county judge of Delaware county and State of New York:

We, the undersigned, tax-payers of the town of Andes, county of Delaware, and State of New York, being a majority of the tax-payers of said town whose names appear upon the last preceding tax-list or assessment-roll of said town as owning or representing a majority of the taxable property in the limits of said town, hereby make application to the county judge of said county by petition and say that we are such a majority of tax-payers and represent such a majority of taxable property, and that we desire that such town shall create and issue its bonds to the amount of ninety-eight thousand dollars ($98,000), in accordance with the provisions of the act entitled "An act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," passed May eighteenth, 1869, three-fifths being present (said amount not to exceed twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll), and invest the same or the proceeds thereof in the stock of the Delhi and Middletown Railroad Company, an association formed in said county and State, on condition that said road is located by Fish Lake and Shavertown or village.

November 23d, 1870.

Alex'r Shaw.
Wm. S. Doig.
Lorenzo D. Terry.
Thomas Hyzer.
Andrew Armstrong.
Alexander Shaw.

(Endorsed:) No. 4. Filed May 6th, 1871.

190 To the county judge of Delaware county and State of New York:

We, the undersigned, tax-payers of the town of Andes, county of Delaware, and State of New York, being a majority of the tax-payers of said town whose names appear upon the last preceding tax-list or assessment-roll of said town as owning or representing a majority of the taxable property in the limits of said town, hereby make application to the county judge of said county by petition and say that we are such a majority of tax-payers and represent such a majority of taxable property, and that we desire that such town shall create and issue its bonds to the amount of ninety-eight thousand dollars ($98,000), in accordance with the provisions of the act entitled "An act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," passed May eighteenth, 1869, three-fifths being present (said amount not to exceed twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll), and invest the same or the proceeds thereof in the stock of the Delhi and Middletown Railroad Company, an association formed in said county and State.

Above conditions shall be null & void unless said road shall be located by Shavertown & Lumberville.

November 23d, 1870.

John A. Russell.	W. B. Shafer.
D. B. Beardsley.	Ira Weaver.*
G. R. Shaver.	Eli F. Felton.
Wm. Mosher.	Beatie Hamilton.
Mary Edwards.	Ira W. Hyzer.

(Endorsed:) No. 14. Filed May 6th, 1871.

191 Plaintiff objected to the introduction of the papers in evidence on the ground that it does not appear that they were papers upon which the county judge placed his adjudication, and upon the ground that it is not shown that the county judge acted upon these papers in making his adjudication; which objection was overruled, and plaintiff excepted.

The maps referred to in the deposition of Geo. T. Warner, with the certificates and filing thereon, were put in evidence—one filed March 4th, 1878, and the other filed May 1, 1872; certified copies of which said maps will be produced in the argument.

Defendant put in evidence the papers in an action brought by Malcolm Calhoun and others against George H. Millard and others, of which the following are copies:

* We are unable positively to decipher this name, but think it correct as written above.

192 STATE OF NEW YORK:

Supreme Court, Delaware County.

MALCOLM CALHOUN, ROBERT BRISBANE, JOHN GLENDENNING, ISAAC Fletcher, Thomas Gladstone, Jr., William S. Doig, Alfred Glendenning, James Fletcher, Jr., David D. K. George, George K. Gladstone, Charles R. Tremper, Ephraim A. Worden, Andrew Tuttle, James Davidson, James G. Garrick, Alexander McQeen, Crawford Shaw, Isaac Samuels, David Burroughs, John Campbell, George Liddle, Charles Connor, Andrew E. Liddle, Richard Morse, George W. Shaver, and Abram Bussey, Plaintiffs,

against

THE DELHI AND MIDDLETOWN RAILROAD COMPANY, JAMES BALlantine, as Supervisor of the Town of Andes; John Dickson, George R. Shaver, Lyle Thompson, James M. Hastings, Sarah M. Phyfe, Elizabeth Hastings, John Phyfe, Mary Douglas, David Kennedy, Hudson City Savings Institution, John R. Newkirk, James Stewart, Mrs. Columbus Van Deusen, Kate M. Campbell, Thomas Lee, William Gladstone, Thomas E. Hastings, Janette E. McMurdy, George H. Millard, Individually and as Administrator of Harvey R. Millard, Deceased; The Town of Delhi; William Gleason, as Supervisor of the Town of Delhi; Kingston National Bank, of Kingston, New York, The Rondout Savings Bank, Defendants.

The above-named defendants:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiffs' attorneys within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Dated January 2d, 1882.

I. H. MAYNARD AND
C. M. SHAW,
Plaintiffs' Attorneys.

Office address: Stamford, Delaware county, N. Y.

Post-office address: Stamford, Delaware Co., N. Y.

193 Supreme Court, Delaware County.

MALCOLM CALHOUN, ROBERT BRISBANE, JOHN GLENDENNING, ISAAC Fletcher, Thomas Gladstone, Jr., William S. Doig, Alfred Glendenning, James Fletcher, Jr., David D. K. George, George K. Gladstone, Charles R. Tremper, Ephraim A. Worden, Andrew Tuttle, James Davidson, James G. Garrick, Alexander McQueen, Crawford Shaw, Isaac Samuels, David Burroughs, John Campbell, George Liddle, Charles Connor, Andrew E. Liddle, Richard Morse, George W. Shaver, and Abram Bussey, Plaintiffs,

against

THE DELHI AND MIDDLETOWN RAILROAD COMPANY, JAMES BALLANTINE, as Supervisor of the Town of Andes; John Dickson, George R. Shaver, Lyle Thompson, James M. Hastings, Sarah M. Phyfe, Elizabeth Hastings, John Phyfe, Mary Douglas, David Kennedy, Hudson City Savings Institution, John R. Newkirk, James Stewart, Mrs. Columbus Van Deusen, Kate M. Campbell, Thomas Lee, William Gladstone, Thomas E. Hastings, Janette E. McMurdy, George H. Millard, Individually and as Administrator of Harvey R. Millard, Deceased; The Town of Delhi; William Gleason, as Supervisor of the Town of Delhi; Kingston National Bank of Kingston, New York, The Rondout Savings Bank, Defendants.

The plaintiffs, for their amended complaint against the defendants in this action, respectfully show to the court that the plaintiffs and each of them are residents and tax-payers of the town of Andes, in the county of Delaware, and for more than two years before the commencement of this action have been assessed for and have paid taxes upon real estate or personal property in said town of Andes and county of Delaware, and that the sum of their said assessments in said town amount to fifty-seven thousand dollars, and that they are liable to pay taxes upon such assessments in said town, and that they have been assessed and paid taxes therein upon assessments of the above amount within one year previous to the com-

194 mencement of this action.

That they have caused to be executed and filed in the Delaware county clerk's office a bond to the defendants herein, approved by the Hon. David L. Follett, a justice of this court, in the penalty of $5,000, directed by him and executed by two or more of the plaintiffs, at least two of whom have severally justified in the sum of $5,000, and which bond was conditioned to pay all costs that may be awarded the defendants or either of them.

That the defendant, The Delhi and Middletown Railroad Company, claims to be a corporation duly organized under and pursuant to the laws of the State of New York; that the defendant, The Hudson City Savings Institution, is a domestic corporation; that the defendant, James Ballantine, is the supervisor of the said town of Andes.

That heretofore, and in the month of September, 1871, the defendants, George R. Shaver and John Dickson, with one Andrew Armstrong, who has since died, falsely and wrongfully claimed that

they were commissioners of said town of Andes, duly authorized to issue the bonds of said town to the amount of $98,000, and to invest the said bonds or the proceeds thereof in the stock of the said Delhi and Middletown Railroad Company, and the said Shaver, Dickson, and Armstrong, claiming to be such commissioners as aforesaid, made and executed certain instruments in writing, signed by them as such commissioners and sealed with their seals, of which instruments the following is a substantial copy, excepting the amount of the same, which in some of the said instruments was $100,
195 in others $500, and in the remainder $1,000, to wit:

UNITED STATES OF AMERICA.

State of New York, Town of Andes, County of Delaware.

Issued by virtue of an act of the Legislature of the State of New York entitled "An act to authorize the formation of railroad corporations and to regulate the same, passed April 2d, 1850, and an act to amend an act entitled 'An act to authorize the formation of railroad corporations and to regulate the same, passed April 2, 1850,' so as to permit municipal corporations to aid in the construction of railroads," passed May 18th, 1869 (— sixty-nine), three-fifths being present.

These acts authorize any city or town, except in the counties of New York, Kings, Erie, Greene, Albany, Westchester, Ontario, Seneca, Yates, Onondaga, and Niagara, to subscribe to the stock of any railroad corporation formed in pursuance of said act, and these acts authorize the Town of Andes to subscribe to the stock of the Delhi and Middletown Railroad Company, and to issue town bonds in payment thereof, all necessary and legal proceedings having been taken and had under said acts.

Know all men by these presents that we, the undersigned, commissioners under the above-entitled acts for the town of Andes, in the county of Delaware and State of New York, upon the faith and credit and in behalf of said town, for value received, promise to pay to the bearer the sum of one hundred dollars on the 1st day of September, nineteen hundred and one (1901), at the Ameri-
196 can Exchange National Bank, in the city of New York, with interest at seven per cent. per annum, payable semi-annually, on the first days of March and September in each year, at the same place, on the presentation and surrender of the coupons for such interest, hereto annexed.

In witness whereof we have hereunto set our hands and seals and have caused the coupons hereto annexed to be signed by John Dickson, one of our number, on the first day of September, in the year one thousand eight hundred and seventy-one.

(Signed) JOHN DICKSON. [L. S.]
G. R. SHAVER. [L. S.]
ANDREW ARMSTRONG. [L. S.]

Registered in the county clerk's office of the county of Delaware.

In witness whereof the clerk of the said county has hereto set his hand and official seal.

(Signed) SMITH H. WHITE, *Clerk.*

That said several instruments in and by their terms purported to acknowledge that the said Town of Andes was indebted to —— —— or bearer in the sum more particularly named in each instrument, and amounting in all of said instruments to said sum of $98,000, which said sum it promised to pay, at the American Exchange Bank, in the city of New York, at the time therein
197 specified, with interest at seven per cent., payable at the same place, semi-annually, upon the presentation and surrender of the coupons therefor annexed to said bonds.

That there was attached to each of said bonds interest warrants or coupons purporting to be signed by the said John Dickson as such commissioner as aforesaid, which said coupons bore even date with said bonds and each of which purported to contain a promise on the part of the said Town of Andes to pay the bearer thereof the amount which was equal to the semi-annual interest on the bond to which said coupon was attached, at the rate of seven per cent. per annum, and said coupons became due alternately on the first days of March and September in each year until the maturity of the bonds to which the same were attached.

That each of said bonds was registered in the office of the county clerk of Delaware county on the — day of ——, 1871; and the plaintiffs further say that the defendants Shaver and Dickson, with the said Armstrong, about the year 1872, the precise time being unknown to the plaintiffs and they being unable, after diligent inquiry, to ascertain the same, transferred the said pretended bonds so made by them as aforesaid to the Delhi and Middletown Railroad Company, and received in exchange therefor certain shares of the stock of said company.

That the number of said shares or the nominal value thereof is entirely unknown to the plaintiffs, but these plaintiffs allege and insist that the actual value of said stock is and then was far less than the value of said bonds would be if the same were
198 genuine securities of said town of Andes, and that the said stock was not then nor is it now of any value whatever.

That the contemplated line of the railroad proposed to be built by said company was only 31 miles; that the said company had then resolved to issue or was contemplating the issue of first-mortgage bonds upon the property of said company to the amount of $620,000, and such bonds were actually issued on or about July 1st, 1872.

That no part of the said railroad has ever been put in operation, and during the past year the said mortgage has been foreclosed and said stock cut off and extinguished.

And the plaintiffs further say that the said Shaver, Dickson, and Armstrong were not commissioners, nor was any or either of them a commissioner of said town of Andes, nor had they or either of them any right or authority to issue the said bonds in the name

of said town, nor to transfer the same, nor to bind the said town in any way thereby, and the said Shaver, Dickson, and Armstrong and the said Delhi and Middletown Railroad Company and their officers and agents who received the said bonds as aforesaid, and each of them, well knew at the time of signing said instruments that they had not nor had any of them any right or authority to act as commissioners for said town or to issue the bonds thereof, and the said plaintiffs charge the facts to be that the said Shaver, Dickson, and Armstrong issued said bonds and the same were received by the said Delhi and Middletown Railroad Company
199 and its officers with the intent and for the purpose of creating a pretended lien on the property of said town and on the property of the tax-payers thereof.

And said plaintiffs further say that the said bonds so issued and transferred as aforesaid are an apparent lien and charge upon all the property and estate, real and personal, within the said town and upon the property and estate, real and personal, of these plaintiffs.

And the said plaintiffs further say that they are informed and believe that the said Delhi and Middletown Railroad Company have sold and transferred all or a large part of said pretended bonds, and that the same or a portion thereof are now held by the defendants Lyle Thompson, James M. Hastings, Elizabeth Hastings, Sarah M. Phyfe, John Phyfe, Mary Douglas, David Kennedy, Hudson City Savings Institution, John R. Newkirk, James Stewart, Mrs. Columbus Van Deusen, Kate M. Campbell, Thomas Lee, William Gladston, Thomas E. Hastings, Jannette E. McMurdy, George H. Millard, individually and as administrator of Harvey R. Millard, deceased; the Town of Delhi, William Gleason, as supervisor of the town of Delhi; the Kingston National Bank of Kingston, N. Y., and the Rondout Savings Bank.

That the defendant, the said Kingston National Bank, has in its possession or under its control a quantity of said bonds, the nominal value of which amounts to several thousand dollars, and the No. of said bonds and the denominations and actual amount thereof are unknown to plaintiffs, and that the defendants, Lyle Thomp-
200 son, James M. Hastings, Elizabeth Hastings, Sarah M. Phyfe, John Phyfe, Mary Douglas, David Kennedy, Hudson City Savings Institution, John R. Newkirk, James Stewart, Mrs. Columbus Van Deusen, Kate M. Campbell, Thomas Lee, William Gladstone, Thomas E. Hastings, Jannette E. McMurdy, George H. Millard, individually and as administrator, &c.; the Town of Delhi; William Gleason, as supervisor of the town of Delhi; the Rondout Savings Bank have each a quantity of said bonds in his or her possession or under his or her control, of the nominal value hereinafter stated, to wit:

The defendant, Lyle Thompson, $1,300; James M. Hastings, $400; Elizabeth Hastings, $100; Sarah M. Phyfe, $400; John Phyfe, $400; Mary Douglass, $2,100; David Kennedy, $2,000; Hudson City Savings Institution, $25,800; John R. Newkirk, $1,100; James Stewart, $1,000; Mrs. Columbus Van Deusen, $9,500; Kate M. Campbell, $600; Thomas Lee, $100; William Gladstone, $500; Thomas E.

Hastings, $1,700; Jannette E. McMurdy, $500; George H. Millard, individually and as administrator, &c., $2,000; Town of Delhi and William Gleason, as supervisor, $3,000; Rondout Savings Bank, $1,000; but the No. of said bonds and their denominations, respectively, are unknown to these plaintiffs.

And these plaintiffs further say that the said Shaver, Dickson, and Armstrong claim and allege that they were authorized and empowered to issue said bonds by virtue of a certain pretended adjudication of the then county judge of Delaware county, which was entered in the office of the clerk of said county on the 22d day of May, 1871; that the said county judge never had or acquired any jurisdiction to make said order and adjudication or to entertain the proceedings in which it purports to have been made; that the following
201 is a copy of the said pretended adjudication:

In the matter of the petition of a majority of the tax-payers of the town of Andes, representing a majority of the taxable property in the limits of said town, on an application to the county judge of Delaware county to create and issue its bonds to the amount of ninety-eight thousand dollars.

Whereas a majority of the tax-payers of the town of Andes, in the county of Delaware, representing a majority of the taxable property in the limits of said town, made application to me by petition, verified by one of the petitioners, setting forth that they were such a majority of tax-payers and representing such a majority of taxable property, and that they desired that such town create and issue its bonds to the amount of ninety-eight thousand dollars; and

Whereas, on the 6th day of May, 1871, I issued an order that a notice be published in the Andes Recorder, a newspaper published in said town of Andes, setting forth that on the 22d day of May, 1871, I would proceed to take proof of the facts set forth in said petition as to the number of tax-payers joining in such petition and as to the taxable property represented by them, and whenever due proof having been made before me of the due publication of said notice more than ten days previous to this date; and

202 Whereas due proof as to the said allegations in said petition having been made before me, and it appearing satisfactory to me that said petitioners do represent a majority of the tax-payers of said town of Andes, as shown by the last preceding tax-list or assessment-roll, and do represent a majority of the taxable property upon said list or roll, on motion of White & Jacobs, attorneys for petitioners, I do hereby adjudge and determine that said petitioners do represent a majority of the tax-payers of said town of Andes, Delaware county, as shown by the last preceding tax-list or assessment-roll, and do represent a majority of the taxable property upon said list or roll, and do hereby adjudge and determine that the same be entered of record.

Given under my hand at Delhi, in said county, on the 22d day of May, 1871.

EDWIN D. WAGNER,
County Judge of the County of Delaware.

That the proceeding in which such adjudication was made was based upon nineteen different petitions, of each of which the following is a copy, excepting the signatures thereto, to wit:

To the county judge of Delaware county and State of New York:

We, the undersigned, tax-payers of the town of Andes, county of Delaware, and State of New York, being a majority of the tax-payers of said town whose names appear upon the last preceding tax-list or assessment-roll of said town as owning or representing a majority of the taxable property in the limits of said town,
203 hereby make application to the county judge of said county by petition and say that we are such a majority of tax-payers and represent such a majority of taxable property, and that we desire that such town shall create and issue its bonds to the amount of ninety-eight thousand dollars ($98,000), in accordance with the provisions of the act entitled "An act to amend an act entitled 'An act to authorize the formation of railroad corporations and to regulate the same,' passed April 2d, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," passed May 18th, 1869, three-fifths being present (said amount not to exceed twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll), and invest the same or the proceeds thereof in the stock of the Delhi and Middletown railroad company, an association formed in said county and State. November 23d, 1870.

That one of said petitions, to which six signatures purport to be signed, also contained at the end thereof the following:

"On condition that said road is located by Fish Lake and Shavertown or village."

And another of said petitions, to which thirty-nine signatures purport to be signed, contained at the end thereof the following:

"On condition that said road is located by Fish Lake and Shavertown," and another of said petitions, to which nine signatures purport to be signed, contained at the end thereof the following:
204 "Above conditions shall be null and void unless said road shall be located by Shavertown and Lumberville."

That no other petition was presented to said county judge authorizing him to act in said matter.

That said petitions were presented to said county judge and filed by him on the 6th day of May, 1871.

That such petitions were not signed by a majority of the tax-payers whose names appear on the last preceding tax-list or assessment-roll of said town as owning or representing a majority of the taxable property in the corporate limits of said town, nor were they signed by such majority, not including those taxed for dogs or highway tax only.

That some of the signatures to said petitions were made with a mark, which in some cases were not witnessed at all, and in other cases witnessed, but no proof made of the genuineness of the signatures.

That fifty of the signatures to said petitions purport to be written with a lead pencil, and some purport to be crossed off, and some purport to be signed by another, but no proof is made of the authority of such person to make the signature.

That many of the signatures, as plaintiffs are informed and believe true, are forgeries, and were never made by the persons whose names they bear, or by their authority, permission, or consent.

And plaintiffs have caused search to be made among the
205 records and files of the said clerk's office, and have been unable to find that such petitions were verified by one of the said petitioners in the manner required by law, and they allege and charge the fact to be that no such verification was made or presented to said county judge.

That eighteen of said nineteen petitions have no verification whatever upon them and do not purport to be verified in any manner.

That upon the presentation of said petition said county judge proceeded, without authority of law, to make the following order and notice:

On reading and filing the annexed petition of a majority of the tax-payers of the town of Andes, Delaware county, representing a majority of the taxable property in the limits of said town, verified by James H. Davis, one of said petitioners, setting forth that they are such a majority of tax-payers and represent such a majority of taxable property, and that they desire said Town of Andes shall create and issue its bonds to the amount of ninety-eight thousand dollars, and invest the same or the proceeds thereof in the stock of the Delhi and Middletown Railroad Company, an association formed in said county and State:

Now, on motion of White & Jacobs, attorneys for said petitioners, ordered that a notice be forthwith published in the Andes Recorder, a newspaper published in said county, directed to whom it may concern, that on the 22d day of May, 1871, I shall proceed to take proof of the facts set forth in said petition as to the number of tax-payers joining in such petition and as to the amount of the taxable
206 property represented by them.

Delhi, May 6th, 1871.

EDWIN D. WAGNER,
County Judge of Delaware County.

To whom it may concern:

Notice is hereby given that a petition purporting to be signed by a majority of the tax-payers of the town of Andes, in the county of Delaware, representing a majority of the taxable property in the limits of said town, duly verified by one of the petitioners, has been filed in my office, and that I shall proceed, on the 22d day of May next, at 1 o'clock p. m., to take proof of the facts set forth in said petition as to the number of tax-payers joining in such petition and as to the amount of taxable property represented by them.

Given under my hand at Delhi, in said county, on the 6th day of May, 1871.

EDWIN D. WAGNER,
County Judge of Delaware County.

And on said 22d day of May, 1871, the following affidavit of publication of said notice was filed with said county judge:

DELAWARE COUNTY, *ss:*

Bryson Bruce, of Andes, in said county, being duly sworn, says that he is editor, proprietor, and publisher of the Andes Recorder, a newspaper published in said town of Andes; that the annexed notice was first inserted and published in said paper on the 11th day
207 of May, 1871, and continued in said paper till the 22d inst.; that the said notice was published in said paper more than ten days before the 22d inst., the time appointed by the county judge to take proof, &c.

BRYSON BRUCE.

Sworn and subscribed before me this 22d day of May, 1871.

JAMES F. SCOTT,
Notary Public.

And he thereupon made the adjudication aforesaid.

That no proofs whatever were taken by or made before said county judge as to the allegations in said petition, and no other tax-payers of said town there and then appeared before him and expressed a desire to join as petitioners in said petitions, and said adjudication is void and of no effect.

That S. H. White, one of said firm of White & Jacobs, who assumed to appear in said proceedings as one of the attorneys for said petitioners, was then a stockholder and director in said railroad company, and secretary and a member of the executive committee thereof, and was afterwards its treasurer, and was then also attorney for said railroad company and acting as such and receiving from said company a large salary or other compensation for his services as such attorney, and said adjudication and all of the papers in said proceeding excepting the petitions, which are printed, are in his handwriting.

That he had no authority, nor did said White & Jacobs or either of them have any authority, to appear for the persons whose
208 names are signed to said petitions, or any or either of them, in said proceeding, but the said White and the said firm were employed by said railroad company to conduct said proceedings, and were paid by said company for all of their services therein, and said bonds or a large number of them, as plaintiffs are informed and believe true, came into the hands of said White.

That the said county judge thereupon made an order or appointment, of which the following is a true copy:

Know all men by these presents that, I, Edwin D. Wagner, county judge of Delaware county, in the State of New York, having determined that the petitioners of the town of Andes do represent a majority of the taxable property of said town and a majority of the tax-payers of said town, have appointed and do hereby appoint Andrew Hawver and John Dickson and Andrew Armstrong, residents

and freeholders in said town of Andes, commissioners for said town of Andes, to carry into effect the provisions of an act entitled "An act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April 2d, 1850, so as to permit municipal corporations to aid in the construction of railroads, passed May 18th, 1869, three-fifths being present, to issue bonds and take stock in the Delhi and Middletown railroad."

Witness my hand and seal this 22d day of May, 1871.

EDWIN D. WAGNER, [L. S.]
County Judge of Delaware County.

209 And thereafter the said Hawver, Dickson, and Armstrong made and filed in the Delaware county clerk's office an oath, of which the following is a copy:

DELAWARE COUNTY, *ss:*

Andrew Hawver, John Dickson, and Andrew Armstrong, each being duly sworn, does each for himself say that he will support the Constitution of the United States and the constitution of the State of New York, and that he will faithfully discharge all the duties of the office of railroad commissioner for the town of Andes for the purpose of issuing bonds and taking stock in the Delhi and Middletown railroad.

ANDREW HAWVER.
ANDREW ARMSTRONG.
JOHN DICKSON.

Sworn and subscribed before me this 22d day of May, 1871.
EDWIN D. WAGNER,
County Judge of Delaware County.

And thereafter claimed and insisted that they were duly authorized to act as such commissioners.

That November 15th, 1871, the said Hawver filed with said county judge his resignation of such office and appointment, and said county judge thereafter made an order or appointment in writing appointing said George R. Shaver in his place, who has since assumed to act and has claimed the right to act as such commissioner until the expiration of the term for which he was appointed.

That all of said appointments were void and conferred no
210 right or authority upon said persons to act for or create any liability against said town of Andes; and the plaintiffs further say that notwithstanding said proceedings are void and said adjudication invalid and of no effect and said bonds are not a legal or valid obligation against said town, yet the holders of said bonds and the said defendants, who are holders of said bonds or of some portion thereof or have the same in their possession or under their control, as hereinbefore alleged, and each and every of them, claim and insist that the said bonds are a valid and subsisting debt against said town of Andes, and are a lien and charge upon the real and personal property situated and being therein, and that the defendant,

James Ballantine, as supervisor of said town, has reported to the board of supervisors of Delaware county, at its annual session for 1881, which terminated December 10th, that the same may be raised by a tax upon the property of said town and the tax-payers thereof, the interest — which, by the terms thereof, will become due and payable upon said pretended bonds on the 1st days of March and September next, and amounting to $6,650, and the said board of supervisors levied a tax upon the real and personal property of said town, including that of these plaintiffs, for that purpose, and made and delivered their tax-list and warrant for the collection of the same to the collector of said town, and the same has been collected by him and paid over to said supervisor, and these plaintiffs fear that if the said defendants are not restrained by an order of this court the said supervisor will cause the amount so levied and collected to be paid
211 over to the holders of the said pretended bonds without any adjudication upon the validity thereof, and the same will be lost to the said town.

And the plaintiffs further say that the said defendants have conspired and colluded together and with each other and with the other holders of said bonds, who are unknown to the plaintiffs and cannot, after diligent inquiry, be ascertained, to impose the said pretended bonds upon the said town of Andes and to compel the payment thereof and to cause the same to be regarded as a valid and subsisting lien and charge upon the property in the said town, including that of the plaintiffs, and that thereby and by reason of the premises the property, funds, and estate of said town are liable to be wasted, impaired, and injured, and that if the said bonds are not cancelled and set aside the said town will be liable to be sued by the several holders of the said pretended bonds, and the property and funds of said town, as well as the property and estate of the plaintiffs and the other tax-payers thereof, will be injured and impaired, and that unless the said defendants, who are holders of said bonds, shall be restrained from disposing of said bonds the plaintiffs fear that they will sell and dispose and remove the same out of the jurisdiction of this court.

And the said plaintiffs further say that they bring this suit as well in behalf and for the benefit of all the other tax-payers of said town as in behalf of the said plaintiffs; and these plaintiffs
212 have been duly authorized by the voters and tax-payers of said town, in town meeting assembled, to prosecute this action in behalf of said town and of all the tax-payers thereof as well as in their own behalf.

Wherefore the plaintiffs pray the judgment of this court that the said James Ballantine, as supervisor of said town, be restrained and enjoined from taking any steps or doing any act or thing or commencing any proceedings for the payment of the interest warrants or coupons on said bonds or making any report to procure the levy of a tax for the payment thereof or from making any payment thereon or on account thereof until the final determination of this action; that the said defendants, who are the holders of said bonds or of some portion thereof or have the same or any portion thereof in

their possession or under their control, and each and every of them, and all other holders of said bonds, be restrained from negotiating or in any manner disposing of the same until the like determination of this action.

That some proper and suitable person be appointed receiver, to whom the holders of said bonds shall be directed to deliver the same, to the end that the same may be kept within the jurisdiction of this court.

And the said plaintiffs further pray judgment that the said bonds are not a debt against the said town nor a lien or charge against the property therein or against the property of the tax-payers thereof, and that the said bonds may be decreed to be delivered up to be canceled and destroyed, and that said adjudication may be vacated,
213 set aside, and opened, and the plaintiffs have leave to appear in said proceeding and interpose a defense thereto, and for such other or further relief as may be proper.

I. H. MAYNARD AND
C. M. SHAW,
Plaintiffs' Attorneys.

Office and post-office address: Stamford, Del. Co., N. Y.

DELAWARE COUNTY, *ss:*

Thomas Gladstone, Jr., being duly sworn, says that he is one of the plaintiffs in the above-entitled action; that he has heard the foregoing complaint read and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

THOMAS GLADSTONE, JR.

Sworn to before me this 23d day of February, 1882.

C. L. ANDRUS,
Notary Public.

214 Supreme Court, Delaware County.

MALCOLM CALHOUN and Others
against
THE DELHI AND MIDDLETOWN RAILROAD COMPANY and Others.

The defendants in the above-entitled action, answering the complaint of the plaintiffs, and for a first defense thereto, respectfully shows to this court—

1. That *he* avers that *he* does not own or hold or control, at the date of verifying this answer & of joining issue, any bond, coupon, or other obligation of the town of Andes, or purporting to be such, whether issued at the time or in the manner set forth in the complaint or otherwise, and did not when the amended complaint was made & verified.

2. And the defendant- makes each of the following specific denials, upon information and belief:

It is specifically denied that the plaintiffs, upon the commencement of this action, have caused to be executed and filed in the Delaware county clerk's office a bond to the defendants herein, approved by Hon. David L. Follett, a justice of this court, in the penalty of $5,000, directed by him and executed by two or more of the plaintiffs, "at least two of whom have severally justified in the sum of $5,000, and which bond was conditioned to pay all costs that may be awarded the defendants or either of them," or that upon the commencement of the action any bond in any amount, conditioned as aforesaid, was so filed or executed, or that the plaintiffs have executed, filed, or served any bond under chapter 531 of the laws of 1881.

It is specifically denied that the proceedings upon which the adjudication referred to in the complaint was made were based upon 19 different petitions, or upon more than one petition, or that said 19 headings and verifications did not constitute one petition, or that there was one petition with six signatures or with any number of signatures less than the requisite majority, or that any of said signatures were forgeries, or that any signature was not made by the person whose name it bears, or, in case of a mark, by his authority, or that due proof was not made of the genuineness of each signature, or that any signature was crossed off or not signed by the authority of the tax-payer whose name is signed, or that the petition and each part thereof was not verified, or that there were any unverified petitions, and each and every allegation of the complaint from folios 34 to 38, inclusive, is specifically denied.

It is specifically denied that the petition referred to in the complaint was not signed by a majority of the tax-payers whose names appear upon the last preceding tax-list or assessment-roll of the town of Andes, to wit, of the year 1870, as owning or representing a majority of the taxable property in the corporate limits of said town, or that, not including those taxed for dogs or highway tax only, it was not signed by a majority of such tax-payers.

It is specifically denied that there was no verification to said petition by one of the petitioners whose name appears therein, or that no verification was made or presented to the county judge, or that he proceeded without jurisdiction or authority of law in making the the orders, notice, adjudication and appointments set forth or referred to in the complaint, or any of them, or that they or any of them are void and of no effect.

It is specifically denied that the county judge based or made his adjudication simply upon the petition and papers named in the complaint, or that no proofs were taken by or made before the said county judge as to the allegations in said petition and each fact necessary to be shown for the rendering of a valid adjudication; but as to whether other tax-payers of said town appeared before him on said hearing on May 22, 1871, and expressed a desire to join as petitioners in said petition, or became petitioners before him, the defendant has no knowledge or information sufficient to form a belief.

It is specifically denied that said Hawver, Armstrong, and Dick-

son, and said George R. Shaver were not railroad commissioners of the said town of Andes, and duly authorized to issue bonds of said town to the amount of $98,000 and invest the said bonds in the stock of the Delhi & Middletown Railroad Company at the times referred to in the complaint, or that any of them was not a freeholder at said times.

It is specifically denied that the coupons attached to said bonds were never in fact signed by the said Dickson as such commissioner.

It is specifically denied that any bonds were issued before the said Shaver had qualified as such commissioner or become entitled to act as such.

It is specifically denied that said bonds were not transferred to said railroad company in the year 1871.

It is specifically denied that the transfer was made upon any express written condition or promise on the part of the railroad company that the said bonds or the avails thereof should be expended in construction of said railroad in the limits of and through said town of Andes, but the defendant-, upon information and belief, avers that in fact a much greater amount than that realized from the sale of said bonds was so expended.

215 It is specifically denied that said railroad stock was valueless or of little value at the time of the exchange of said bonds therefor or that it was ever worthless, but as to the comparative value of said stock and said bonds at the time of their exchange, or as to the action of the railroad company in issuing first-mortgage bonds, or what amount of first-mortgage bonds were actually issued by said company, the defendant- has no knowledge or information sufficient to form a belief, except as to the issuing of $107,000 of the first-mortgage bonds of the company, dated July, 1872, which amount is admitted to have been issued, and that the franchises of the company were afterwards sold upon foreclosure.

It is specifically denied that the presentation of the petition to the county judge was unauthorized, or that there was not a full compliance with each of the conditions precedent to the validity of said bonds.

It is specifically denied that the defendant- has any knowledge or information sufficient to form a belief as to the allegation as to S. H. White or White & Jacobs, or as to the authority of the plaintiffs to bring this action, as alleged at folio 57½.

And it is specifically denied that there has been or is any conspiracy or collusion on the part of said defendants or any of them with one another or with other persons to impose any of said bonds upon said town or to compel their payment, or to cause the same to be regarded as a lien and charge upon the property of said town or that of the plaintiffs.

Second Defence.

And for a second defence the defendant- alleges, upon information and belief—

1. The Delhi and Middletown Railroad Company, since Novem-

ber 14th, 1870, has been a railroad corporation of the State of New York, duly organized and incorporated in pursuance with the statutes of the State, for the purpose of constructing, maintaining, and operating a railroad from Delhi, in the county of Delaware and State of New York, to Middletown, in said county and State.

2. The town of Andes for 20 years last past has been one of the towns of said county and a municipal corporation duly organized according to law.

3. In 1871 proceedings were instituted for bonding the town of Andes in aid of the Delhi & Middletown railroad, and said proceedings were based upon the tax-list or assessment-roll of said town for the year 1870. Upon said list there were no persons taxed for highway tax only. The number of persons taxed thereon was 530, of whom 14 and no more were taxed for dogs only, and, deducting those thus taxed, the number of tax-payers was 516, and the amount of property on said tax-list was about $480,000.

4. Upon the 6th day of May, 1871, a majority of the tax-payers of said town who were taxed and assessed for property upon the last preceding tax-list or assessment-roll, and representing a majority of the taxable property upon said roll, made application to the county judge of Delaware county, Hon. E. D. Wagner, by petition. A substantial copy of the heading to said petition is set forth in the complaint at about folios 32–34, but these defendants refer to the original petition on file in the office of the county clerk of Delaware county and make the same a part hereof.

Said petition was signed by nearly 300 tax-payers of said town, and but one of said signers—namely, Wm. T. Alexander—was taxed for a dog on said tax-list; and said signers represented taxable property appearing on said tax-list to the amount of $270,000, and, excluding those taxed for dogs only, the majority in favor of bonding was 13 greater than by including them.

5. Said petition, when presented to the county judge, was verified by James H. Davis, one of the petitioners, in an affidavit endorsed thereon and now on file with said petition in said clerk's office, as follows:

"DELAWARE COUNTY, *ss:*

"James H. Davis, being duly sworn, says that he is one of the petitioners mentioned in the foregoing application and knows the contents thereof, and that the same is true of his own knowledge, except the facts therein stated on information and belief, and as to those facts he believes it to be true.

"JAMES H. DAVIS.

"Sworn and sub. before me this 6th day of May, 1871.

"W. MURRAY, JR.,
"*Justice of Sup. Ct.*"

And these defendants allege that there was but one petition, and that this, for convenience of circulation among the tax-payers of said town, and following the universal custom employed in circulating

a bonded petition, was made up of many headings, each containing the same allegations or substantially the same; that these headings in this case were 19, and were numbered from 1–19 and circulated as a set, some receiving many signatures and some not more than two signatures, but each being part of the same petition, and upon May 6th, 1871, the headings were all taken together and placed together and verified as aforesaid as one petition; that said verification was intended to be and was a verification of the whole petition, made up of said 19 headings; that on May 6th, 1871, said petition was duly presented to the county judge, made up of said headings and signatures and verification, as one petition, at the request and by the direction of said signers, and was received by him as one petition, and the persons whose names are signed to said headings signed the same intending that the whole set should be presented to the county judge as one petition.

6. The county judge, having full jurisdiction by virtue of said petition, thereupon made the order of May 6, 1871, set forth in the complaint, and the notice "To whom it may concern" was duly published, as in said affidavit of Bryson Bruce set forth, in the Andes Recorder, a public newspaper published in said town.

Upon May 22, 1871, at the time and place named in said notice, the county judge proceeded to take proof as to the allegations in said petition and as to all necessary matters, and the petition and said affidavits and the tax-list of the said town for the year 1870 were offered and received in evidence before him and oral evidence was given, and it was shown in evidence and satisfactorily proved before said county judge that the requisite majority had actually consented.

216 Whereupon the county judge, having full jurisdiction therefor, made the adjudication, of which a copy appears in the complaint, and by orders upon that day duly made duly appointed Andrew Hawver, John Dickson, and Andrew Armstrong commissioners, and they took the oath of office, of which a copy appears in the complaint, and entered upon the discharge of their duties as such commissioners. On or about November 15, 1871, said Hawver resigned his office, and G. R. Shaver was duly appointed commissioner in his place by said county judge.

And the defendant refers to the original record of the bonding of said town, which record is on file in the office of the clerk of Delaware county, and makes the same a part hereof, and alleges that each condition precedent to the issuing of said bonds was duly fulfilled, and the same when issued became and are valid obligations of the town of Andes.

7. In November and December, 1871, the said commissioners, having previously decided to invest said bonds in the stock of the Delhi and Middletown Railroad Company and to exchange said $98,000 of bonds for an equal amount of the stock of said company, which was then of great value and was being sold in large amounts by the company at par to subscribers therefor, delivered said $98,000 of bonds to said railroad company in exchange for $98,000 of the capital stock of said railroad company, and invested said bonds in

said stock, which stock has since that time been owned by the town of Andes and is now in the hands of the railroad commissioners of said town.

8. Previously to the presenting of said petition to the county judge the said railroad company had actually located its road through said town and by Shavertown and Lumberville and Fish Lake, and in the years 1872, 1873, and 1874 it expended about $200,000 in the actual construction of a railroad from Middletown along said route, about $125,000 of which was actually expended in the town of Andes, and the property and franchises of said road have ever been of great value.

And by chapter 453 of the laws of 1874, entitled "An act authorizing the town clerk of Andes, in Delaware county, to call a special town meeting, and authorizing the voters of said town to decide by ballot whether they will authorize the railroad commissioners of said town to sell and convey the town stock owned by said town in the Delhi & Middletown railroad," the Legislature, recognizing the fact that said bonds were valid and properly exchanged for said stock, which had thereupon become the property of the town, authorized the sale of said stock by the town; but said town and its tax-payers, at a town meeting duly called and had under said act, on June 6, 1874, by a vote of 178 to 112, decided that said stock should not be sold or transferred, but should remain the property of the town, and asserted the ownership of the town therein, and refused to make any arrangement and prevented any arrangement whereby said road could be completed, and by reason of said town holding and owning a controlling interest in said company a reorganization of said company was prevented, as well as the completion of said road by Thomas Cornell and the Ulster & Delaware railroad and the making it a part of their system of roads, at no further expense to the town of Andes. Whereupon the other parties interested in the road were obliged to foreclose the first-mortgage bonds of the company for the purpose of reorganizing the company and completing the road.

And the defendants also refer to chapter 153 of the laws of 1875, entitled "An act relating to stock of the Delhi and Middletown Railroad Company owned by the town of Andes, Delaware county," and allege that thereby and at the request of said town and its tax-payers its title and right of disposal of said stock was again ratified and confirmed by the Legislature of the State, and that said town has always asserted its ownership of said stock, and the same has ever been of considerable value.

9. Ever since the issuing of said bonds as aforesaid the town of Andes has recognized their validity, as well as its tax-payers and the plaintiffs; and said railroad commissioners have continued in office as officers of the town, and their acts have been ratified; and the town, without objection from any tax-payer thereof, has regularly caused the amount of the accruing interest on said bonds to be audited by its board of town auditors as a valid charge against the town, and has procured and caused the supervisor of the town to have the accruing interest levied upon the town by the board of

supervisors of Delaware county in each year since the issuing of said bonds, and has paid said interest without protest on the part of the town or of any of the plaintiffs or other tax-payers up to the present time.

Moreover, in November, 1878, the said town caused the sum of $3,000 to be levied and assessed to be applied in payment of the principal of its said bonded debt, and the same was actually raised by tax upon the property of the tax-payers of said town, without objection on their part or that of any of them or of the plaintiffs, and said $3,000 was actually applied in payment of $3,000 of said bonds, leaving $95,000 thereof outstanding and upon the market.

And the money for the payment of the March and October coupons of 1882, $6,650, is now actually in the hands of the supervisor of the town, who is made a defendant, the same having been regularly audited by the board of town auditors and duly levied upon said town, at its request, by the board of supervisors of Delaware county, and now collected by the collector and paid to said supervisor.

And *this* defendant- further avers, upon information and belief, that each and every bond issued by the said commissioners were, long before the commencement of this action and in or about the years 1871 and 1872, sold and delivered to divers persons, who purchased the same in good faith and for full value and without any knowledge or information that any claim of invalidity was ever made by the plaintiffs or by said town or by anybody; but that *this* defendant- *is* not at the time of making and serving this answer the owner- or holder- of any of said bonds, and has none within *his* control, and is unable to deliver up any for cancellation.

Third Defence.

And for a third defence the defendant- alleges, upon information and belief, that the plaintiffs, upon the commencement of the action, did not furnish to the defendants or to any defendant the bond required by chaper 531 of the act of 1881, and that upon the commencement of the action the plaintiffs have not furnished to the defendants or to any defendant a bond approved by a justice of the supreme court or the county judge of Delaware county in any penalty by him directed not less than $250, and executed by any two of the plaintiffs and approved by said justice or judge, and conditioned to pay
217 all costs that may be awarded to the defendant in such action if the court shall finally determine the same in favor of the defendant, nor did two parties plaintiff severally justify in the sum of $5,000, nor did any other persons or person, sureties or surety, execute any such bond upon the commencement of the action, nor was any such bond filed in the office of the county clerk of Delaware county upon the commencement of the action, nor was any copy thereof or of any such bond served with the summons upon any defendant or any such security furnished; and upon the commencement of the action said bond and security remains unfurnished.

Wherefore the defendant- alleges, upon information and belief, that as against *him* the court has not jurisdiction of the person of

the defendant- or of the subject of the action to grant the relief demanded in the complaint, nor have the plaintiffs legal capacity to sue said defendant- for the cause of action set forth in the complaint, not having complied with the condition precedent to such right of action under said act of 1881.

Fourth Defence.

And for a further defence the defendant- alleges, upon information and belief, that the cause of action set forth in the complaint against *this* defendant- did not accrue within the ten years prior to the commencement of this action, and that therefore the plaintiffs ought not to have or maintain this action against *this* defendant-.

Wherefore the defendant- demands judgment against the plaintiffs for the dismissal of the complaint with costs.

WM. & J. B. GLEASON,
Attorneys for the Defendant-, Delhi, N. Y.

STATE OF NEW YORK, }
County of Delaware, } *ss:*

Lyle Thomson, being duly sworn, says that he is one of the defendants in the above-entitled action; that the foregoing answer is true, to the knowledge of this deponent, except as to the matters which are therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

D. LYLE THOMSON.

Sworn to before me this 31st day of July, 1882.

JOHN HASTINGS,
Notary Public.

218 Supreme Court, County of Delaware.

MALCOLM CALHOUN, ISAAC FLETCHER, JOHN GLENDENNING, ROBERT Brisban, Thomas Gladston, Jr., William S. Doig, Alfred Glendenning, James Fletcher, Jr., David D. K. George, George K. Gladstone, Charles R. Tamper, Ephraim A. Worden, Andrew Tuttle, James Davidson, James G. Garick, Alexander McQueen, Crawford Shaw, Isaac Samuels, David Burroughs, John Campbell, George Liddle, Charles Connor, Andrew E. Liddle, Richard Morse, George W. Shaver, and Abram Bussey

ag'st

THE DELHI AND MIDDLETOWN RAILROAD COMPANY, JAMES BALLANtine, as Supervisor of the Town of Andes; John Dickson, George R. Shaver, Lyle Thompson, James M. Hastings, Sarah M. Phyfe, Elizabeth Hastings, John Phyfe, Mary Douglass, David Kennedy, Hudson City Savings Institution, John R. Newkirk, James Stewart, Mrs. Columbus Van Deusen, Kate M. Campbell, Thomas Lee, William Gladstone, Thomas E. Hastings, Janneatte E. Mowdy, George H. Millard, Individually and as Administrator of Harvey R. Millard, Deceased; The Town of Delhi; Wm. Gleason, as Supervisor of the Town of Delhi; Kingston National Bank of Kingston, N. Y., The Rondout Savings Bank.

219 Notice is hereby given that an action has been commenced

and is now pending in this court, upon a complaint of the above-named plaintiffs against the above-named defendants, for the purpose of obtaining the judgment and decree of this court declaring void certain bonds or obligations issued by the defendants, John Dickson and George R. Shaver, together with one Andrew Armstrong, since deceased, assuming to act as commissioners for the town of Andes, Delaware county, New York, and bearing date September 1st, 1871, and payable to bearer on the 1st day of September, 1901, at the American Exchange National Bank, in the city of New York, with interest at seven per cent. per annum, payable semi-annually, on the 1st days of March and September in each year, at the same place, on the presentation and surrender of coupons for such interest, annexed to said bonds, signed by the said John Dickson, and which bonds or obligations were for the payment of different amounts—some for the payment of the sum of $100, others for the payment of the sum of $500, and others for payment of $1,000—and aggregating in all $98,000, and which bonds purport to be registered in Delaware county clerk's office, and for a decree directing such of said bonds as are now held or were held at the time of the commencement of this action by the defendants, The Delhi & Middletown Railroad Company, James Ballentine, as supervisor of the town of Andes; John Dickson, George R. Shaver, Lyle Thompson, James M. Hastings, Sarah M. Phyfe, Elizabeth Hastings, John Phyfe, Mary Douglass, David Kennedy, Hudson City Savings Institution, John R. Newkirk, James Stewart, Mrs. Columbus Van Deusen, Kate M. Campbell, Thomas Lee, William Gladstone, Thomas E. Hastings, Janette E. McMowdy, George H. Millard, individually and as administrator of Harvey R. Millard, deceased; the Town of Delhi; Wm. Gleason, as supervisor of the town of Delhi; Kingston National Bank of Kingston, N. Y.; the Rondout Savings Bank, to be surrendered and cancelled, and restraining the defendant, James Ballentine, supervisor of said town, from paying the interest or principal of said bonds or any part thereof, and restraining the said defendants, holders of said bonds, from disposing of the same during the pendency of this action, and declaring a certain adjudication made by Edwin D. Wagner, county judge of Delaware county, dated May 22, 1871, and filed in Delaware county clerk's office May —, 1871, relating to proceedings to bond said town of Andes in and of the Delhi & Middletown R. R. Co. void, and to have said adjudication vacated, said bonds, if valid, being declared by statute to be a lien and charge upon the property, real and personal, of the said town of Andes and of the tax-payers thereof and of these plaintiffs, situated in said town.

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I. H. MAYNARD AND
C. M. SHAW,
Att'ys for Pl'ffs.

Office & P. O. address: Stamford, Del. Co., N. Y.

221 The defendant also put in evidence, from the Delaware county clerk's office, the record of a foreclosure of a mortgage executed by the Delhi and Middletown R. R. Co. upon all its property

and franchises and a sale under such foreclosure, Dec., 1881, for $650, cutting off and extinguishing the stock of the company.

Defendant then put in evidence an agreement between James H. Graham, president of Delhi and Middletown R. R. Co., and commissioners of Andes, of which the following is a copy:

"It is hereby understood by and between Andrew Hawver, John Dickson, and Andrew Armstrong, commissioners of the town of Andes, and James H. Graham, president of the Delhi and Middletown railroad, that the bonds of the town of Andes and the avails of the same are only to be expended and used for the construction and equipment of said road in and through the town of Andes.

Dated Delhi, May 22d, 1869.

ANDREW HAWVER,
ANDREW ARMSTRONG,
JOHN DICKSON,
Commissioners of the Town of Andes.
J. H. GRAHAM, *Pres.*"

Defendant then put in evidence papers marked Def't's Ex's A, B, C, D, and E, copies of which will be found set forth in the depositions of Anthony Benson and Jacob W. Hoysradt, Albert Slauson and Albert Hoysradt.

Defendant then read in evidence deposition of Albert Slauson, taken in behalf of plaintiff, of which the following is a copy:

222 ALBERT SLAUSON, being duly sworn on part of defendant, testified as follows:

I reside in Jersey City, N. J., and have resided there continuously for 15 or 16 years. I am familiar with the bonds and coupons described and set forth in the complaints in these actions, and I am the owner and holder of said bonds and coupons and all of them. I became such owner and holder on 6 April, 1882. I obtained them from Mr. Anthony Benson, of Kingston, in this State. I received them from Mr. Benson either the 6th or 7th of April, 1882, and paid par and interest for them in notes. I gave one note to the Rondout Savings Bank for about $9,000 and some interest; I gave one note to David Kennedy, of Rondout, for $2,000 and interest; one to Anthony Benson for $2,100; one to Mrs. Harriet Van Deusen for $1,500. I delivered said notes to Mr. Benson on the day I procured the bonds. Mr. Benson informed me at the time that the bonds belonged to following persons, viz: Rondout Savings Bank, $9,000; David Kennedy, $2,000; A. Benson, $2,100; Mrs. Harriet Van Deusen, $1,500. I took it for granted that Mr. Benson had authority to dispose of these bonds. I cannot remember that he said he had such authority. I paid no money to Benson. Mr. Benson at the time of the transfer, or shortly afterwards, delivered to me a writing, which I now produce and which I now offer in evidence, as follows:

"JERSEY CITY, N. J., *April 6th*, 1882.

"I having this day sold and delivered to A. Slauson fourteen thousand six hundred dollars of the town of Andes bonds, of Dela-

ware county, New York, upon this one condition, that the
223 bonds were properly and legally issued, therefore know all men by these presents that I hereby guarantee that the above-mentioned town of Andes bonds, of Delaware county, New York, were properly and legally issued, and no further.

"(S'g'd) A. BENSON. [L. S.]

"Signed, sealed, and delivered in presence of—

"—— ——."

In the negotiation for these bonds Mr. Benson agreed to give me this writing as a part of the consideration for the transfer. I did not know that these bonds were in litigation at the time the first proposition was made to me, which was about the 6th or 7th of April, 1882. Mr. Benson and I only had one conversation in regard to the matter, but he wrote me a letter the day before he came down.

(Letter produced and marked Def't's Ex. No. 2, of which the following is a copy:)

"Thomas Cornell, president; S. D. Coykendale, vice-president; A. Benson, secretary.

"Incorporated March 24, 1869.

"Rondout Savings Bank; open daily from 9 a. m. to 3 p. m., and Tuesdays from 6 to 8 p. m.

"CITY OF KINGSTON (RONDOUT), N. Y., *April* 6th, 1882.

"A. Slauson, Esq.

"DEAR SIR: Your offer of par and interest for town of Andes bonds, Delaware county, N. Y., is accepted, and will deliver promptly the following amounts for account of the parties, as follows: Rondout Savings Bank, of Rondout, 9,000; David Kennedy, of Rondout, 2,000; A. Benson, of Rondout, 2,100; Mrs. Harriet Van Deusen, of Rondout, 1,500, making $14,600, and for which you can forward your note to the several parties for their respective amounts, with interest at six per cent.

"Yours truly, A. BENSON."

I think this letter was written in response to a letter written
224 by me to Mr. Benson, but I don't remember. My impression is that I received a letter from Mr. Benson before this, to which I replied, and this being a reply to mine. I have no other letter from Mr. Benson. I don't know what reason Mr. Benson had for writing to me, except that he wished to dispose of his bonds. I had dealt in bonds before this. Shortly after the receipt of the letter in evidence Mr. Benson came to Jersey City and called upon me. He had these bonds with him at the time. I don't know that he informed me that these bonds were in litigation at that time. I am quite sure he did not.

Q. During the negotiations for the transfer of these bonds and coupons to you were you not informed by Mr. Benson that an action

had been commenced in the supreme court of the State of New York against the holders of bonds of the town of Andes and of these bonds and coupons to procure an adjudication as to their validity?

(Objected to by pl'ff as immaterial and irrelevant.)

A. Not at the time that I accepted the proposition of Mr. Benson.

Q. Didn't Mr. Benson inform you before the bonds were transferred to you that an injunction had been granted in that action?

(Same obj'n by pl'ff.)

A. Well, now, I am unable to say the precise time Mr. Benson gave me that information, whether at the time he delivered the bonds to me or subsequently.

Q. Was it not during the negotiation for the sale of the bonds to you?

225 (Same obj'n by pl'ff.)

A. I do not recollect further than I have stated.

Q. You had a considerable conversation with him on that day?

(Same obj'n by pl'ff.)

A. Very little.

Q. Did you make no inquiries in reference to the bonds?

(Same obj'n by pl'ff.)

A. No, sir.

Q. Did he tell you that he wanted to transfer these bonds to some one outside of the State of N. Y.?

(Same obj'n.)

A. I am not aware that he did. I don't remember whether he did or did not.

Q. Did he say to you that he regarded it very important or that the holders of the bonds regarded it very important to get them out of the S. of N. Y. & into the hands of some person who was a non-resident of the S. of N. Y.?

(Same obj'n.)

A. I don't remember of any conversation of the kind at all.

Q. Did he say to you that by so doing an action could be brought on these bonds in the U. S. court?

(Same obj'n.)

A. There was no conversation of that kind that I am aware of.

Q. When did you first become aware that these bonds were being litigated?

(Same obj'n.)

226 A. I was not aware that they were being litigated until I began these suits. I don't think they were that I am aware of.

Q. Did you not know before you commenced these actions that an action was pending in the c'ts of the S. of N. Y. in reference — or upon bonds of the town of Andes, in Delaware Co.?

(Same obj'n.)

A. No; and I am not aware of it yet.

Q. You have been subpœnaed in such an action, have you not?

(Same obj'n.)

A. Yes; I was subpœnaed, but that was long after this suit was instituted. I understood that to be an action not on the bonds, but to prevent people from disposing of them.

Q. When did you first become aware that the validity of these bonds of the T. of A. was questioned?

(Same obj'n.)

A. I was not aware of it until I was subpœnaed at Delhi as a witness.

Q. When was that?

A. It was in April or May of this year.

Q. Was not this writing which was given to you by Mr. Benson delivered to you upon the same day that the bonds were transferred to you?

A. I don't know whether it was on the same day or not.

Cross-ex.:

—. ——.

A. The writing was delivered to me about the same time the bonds were delivered to me. I am a citizen of the U. S. I
227 am in my 73d year. I claim to be a man of pecuniary responsibility. I am able to meet and pay the notes referred to in my direct ex'm.

Q. What is your best recollection as to whether you were or were not informed of any of the bonds of the town of Andes being in litigation up to the time the bonds here in suit had been delivered to you?

A. I was not aware of any litigation at that time.

Q. How long had you known Mr. Benson?

A. 40 or 45 years, I should say.

Q. When these bonds were offered to you by him did you believe the offer to be made in good faith?

(Obj'd to by def't as immaterial, irrelevant, & improper.)

A. I supposed so.

Q. Did you know that any obj'n existed to your purchase of these bonds?

(Same obj'n.)

A. No, sir.

Q. Does what you have said in your answers to the five last questions apply to the coupons here in suit?

A. Yes.

Q. Do you know who cut the coupons here in suit from the bonds to which they were attached?

A. I think my son did it. I am not certain whether I assisted or not.

Q. When were they cut off?

A. After I received the bonds & before the com't of these suits.

228 Redirect:

A. The coupons were attached to the bonds in suit when delivered to me by Benson. The notes given by me in pay't for the bonds were made payable on demand. There was no agree't bet'n Mr. Benson and myself or bet'n myself & any other person as to when pay't of these notes was to be demanded.

Recross:

The coupons here in suit are now in my possession.

A. SLAUSON.

Subscribed and sworn to before me this 12th day of June, 1884.

[L. S.] J. W. WEST,

Notary Public, Richmond Co., N. Y.

(Cert. filed in N. Y. Co.)

229 Also deposition of Anthony Benson, of which the following is a copy:

ANTHONY BENSON called & sworn for the defendant:

I reside in the city of Kingston, Ulster county, N. Y. I am secretary of the Rondout Savings Bank. I am acquainted with Albert Slauson, of Jersey City, in the Sate of New Jersey.

Q. Did you, on or about the 6th day of April, 1882, transfer or deliver to him certain instruments purporting to be bonds of the town of Andes, Delaware Co., N. Y.?

A. Yes, sir.

Q. What were the numbers and denominations of those bonds?

A. Numbers are Nos. 60, 62, 63, 76, 79, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 99.

61, 64, 77, 78, 100.

65, 66, 67, 68, 69. They are all $100 bonds.

Also No. 19, 14, 15, 17, 18, 43, & 46.

42, 40, 39, 35, 31.

44 & 45. These last are all $500 bonds.

Nos. 1, 2, 3, 4, 5, bonds of $1,000 each.

Q. To whom did these bonds belong?

A. Nine thousand dollars belonged to the Rondout Savings Bank, two thousand dollars to David Kennedy, twenty-one hundred dollars to Anthony Benson, sixteen hundred dollars to Harriet J. Van Deusen. I received promissory notes from Mr. Slauson for
230 all the above-named bonds. I have some of the notes.

(Notes produced by witness.)

Notes offered in evidence, of which the following are copies:

"For value received I promise to pay A. Benson or order twenty-one hundred and seventy-three $\frac{50}{100}$ dollars, with interest at six per centum per annum, on demand, at my office.

"Jersey City, N. J., April 6, 1882.

"(Signed) A. SLAUSON."

"For value received I promise to pay Harriet J. Van Deusen or order fifteen hundred and fifty-two $\frac{50}{100}$ dollars, with interest at six per centum per annum, on demand, at my office.

"Jersey City, N. J., April 6, 1882.

"(Signed) A. SLAUSON."

The above two notes are the only notes in my possession. There were two other notes given by Albert Slauson on the same day—one of these two last to the Rondout Savings Bank for $9,315 *dollars*, one to David Kennedy for $2,070 *dollars*—both of which notes I delivered to Thomas Cornell. The first note I delivered to Thomas Cornell June 30, 1882; the second note I do not recollect when I delivered it to him. They were both in my possession when the subpœna for this hearing was served upon me. I think the subpœna was served on me last Saturday evening about 3 o'clock.

Q. Who was present when you delivered these bonds to Mr. Slauson?

231 A. I do not recollect. My best impression is that Mr. Slauson was in the office, but I am not sure. I have received no money for these bonds from Mr. Slauson. I received no other writing from him but these notes. I gave Mr. Slauson a writing on that day.

Paper was shown to witness, of which the following is a copy:

JERSEY CITY, N. J., *April* 6, 1882.

I have this day sold and delivered to A. Slauson fourteen thousand six hundred dollars of the town of Andes bonds, of Delaware county, New York, upon this one condition, that the bonds were properly and legally issued; therefore, know all men by these presents that I hereby guarantee that the above-mentioned town of Andes bonds, of Delaware county, New York, were properly and legally issued and no further.

(Signed) A. BENSON.

Signed, sealed, and delivered in presence of—

——.

The negotiations between Mr. Slauson and myself in regard to these matters took place in Jersey City & in New York city. I had seen Mr. Slauson before the day on which the bonds were delivered and had conversations with him in regard to the Andes town bonds. I had two conversations with him, as I think, prior to the day when the bonds were delivered. In these conversations I did not offer to sell to him the bonds in these suits. I told him I

might have some Andes town bonds to sell. Before the day on which these bonds were delivered he had made me an offer for Andes town bonds. The offer was not in writing. The offer was made prior to the day on which the bonds were delivered.

232 The bonds in suit were not referred to specifically at the time he made the offer, and subsequently I wrote to him accepting his offer; and afterwards and about the 7th of April, 1882, I took the bonds to Jersey City and delivered them. I think I told Mr. Slauson at the time the bonds were delivered that I wished to transfer these bonds to some persons outside of the State of New York. I think it was after the delivery of the bonds.

Q. When?

A. Possibly 10 or 12 days after.

Q. Did you say to Mr. Slauson at any time before the bonds were delivered to him that you regarded it very important, or that the holder of the bonds regarded it very important, to get them out of the State of New York and into the hands of some person who was not a resident of the State of New York?

A. No, sir.

Q. Were you a witness in an action brought by Malcom Calhoun and others against the Delhi and Middletown Rail R. Comp'y and others, tried at Delhi April 30, 1884?

A. Yes, sir.

Q. Did you not then testify that you did so inform Mr. Slauson?

A. No; not to my knowledge.

Q. Was the object that you had in view in transferring these bonds to Mr. Slauson ever to have an action brought upon them in the United States court?

Objected to as immaterial and irrelevant.

A. My object was to get them out of the way of the State of N. Y. courts; that the bonds had been enjoined and the in-

233 junction had been dissolved and I wanted to get them out of the State of New York—that is, part of the bonds had been enjoined.

Q. And you so informed Mr. Slauson?

A. Not at the time the bonds were delivered.

Q. When did you so state to Mr. Slauson?

A. I cannot give the time; it was subsequent to the delivery of the bonds.

Q. Was it the same day?

A. No, sir.

Q. Prior to the delivery of these bonds to Mr. Slauson did you inform him that an action was pending in the N. Y. court upon these bonds or coupons detached therefrom?

A. No, sir.

Q. Did you inform him that their legality was questioned?

(Objected to by pl'ff as immaterial and irrelevant.)

A. No, sir; he asked me that question and I said I would guarantee that they were legally and properly issued.

Q. Did Mr. Slauson ask you anything as to their collectibility?
A. No, sir.
Q. Why did you give this guaranty?

(Objected to as immaterial and irrelevant.)

A. Mr. Slauson asked about the legality of the bonds and I offered to guarantee them.
Q. Why did Mr. Slauson pay you for those bonds and coupons and notes?

234 (Objected to as immaterial and irrelevant and incompetent.)

A. That was our agreement.
Q. When was this agreement made?
A. When the offer was made for the bonds.
Q. Did Mr. Slauson give you any reason why he paid you by his notes?
A. He did not; he said it would suit him just as well to give his notes at that time.
Q. Did you tell him that he could give his notes?
A. I told him that he need not pay the money; he might give his notes.
Q. When did you tell him that?
A. When he made the offer for the bonds.
Q. Had he then asked you to take his note instead of the money?
A. No; it was my offer.
Q. Did you tell him that payment of the note would not be demanded unless the bonds and coupons were collected by him, or words to that effect?

(Objected to as before.)

A. No.
Q. Was it talked between you and Mr. Slauson that payment on the notes would not be demanded unless the bonds or coupons were paid when due, or anything to that effect?

(Same objection.)

A. No.
Q. Was there any other writing given Mr. Slauson by you besides the writing already in evidence?

233 A. No. There were other coupons than those already referred to transferred by me to Mr. Slauson at a later date.
Q. What is the date of that transfer?
A. December 13th, 1883.

(It is admitted by plaintiff's counsel that the coupons which Mr. Benson here refers to are those set out in the complaint in suit No. 2512.)

Q. From whom did you receive those coupons?
A. From Thomas Cornell.
Q. Did you buy them?
A. I did not.

Q. What did Mr. Slauson pay you for those coupons?
A. He paid me the face of them by a note.
Q. Have you that note?
A. I have.

Note produced and offered in evidence, of which the following is a copy:

"For value received I promise to pay A. Benson or order twenty-seven hundred and nine dollars, with interest at six per centum per annum, on demand, at my office.

"Jersey City, N. J., November 13, 1883.

"(Signed) A. SLAUSON."

Q. Were these coupons for which this note was given delivered to Mr. Slauson on the day of the date of the note?
A. I won't say positively, but I think it was that day or the day after or the day before. There was no writing given Mr. Slauson by me at the time of this transfer.

236 Q. Did you inform him that the legality of the bonds upon which these coupons had been detached was in litigation?
A. I don't think I did, in that way.
Q. Or anything to that effect?
A. I think I did, in this way: That I presumed that these coupons were from some bonds that had been enjoined.
Q. And did you tell him that an action was pending in the N. Y. State court upon those bonds?

(Objected to as before.)

A. I told him that I presumed they stood in the same condition as the other bonds that I had sold him on the 6th of April, 1882. We had talked about that an action was pending in those courts about those bonds; that they had been enjoined; that the injunction had been dissolved, and an appeal was then pending from the order dissolving it.
Q. Did you tell him that their validity was in litigation?
A. No, sir.
Q. Did you tell — that you wanted to transfer these coupons to some person residing outside of the State of New York?

Same objection.

A. Yes, sir.
Q. Did you tell him that by so doing an action could be brought upon them in the United States court?

Same objection.

A. I did.

237 Q. And did you tell him you regarded it very important to get them into the hands of some person who was not a resident of the State of New York?

(Same objection.)

A. I did not.

Q. This note is still in your possession?

A. Yes, sir.

Q. Did you tell Mr. Slauson that payment of the note would not be demanded unless the coupons were paid or collected, or words to that effect?

A. No, sir; I do not know from whom Mr. Cornell purchased those coupons.

Q. At the time of their transfer to Mr. Slauson, where were the bonds for which they had been detached?

A. I do not know.

Q. Are the bonds and coupons now shown to you all the bonds and coupons to which you have referred in your direct examination?

A. Yes.

Said bonds are offered in evidence, marked Plaintiff's Exhibits Nos. 4, 5, 6, 7, 8, 50, 36, 26, 37, 21, 32, 10, 11, 12, 13, 22, 20, 29, 32, 15, 16, 17, 18, 12, 30, 27, 28, 35, 38, 14, 19, 49, 48, 47, 46, 45, 44, 43, 42, 41, 23, 24, 29, being all the bonds set out in complaint in action No. 2513, said bonds to be produced on trial as if here copied in full, under the objection of defendant's counsel that they are immaterial and irrelevant; that they are not the property of plaintiff
238 and are not legal and valid obligations on the Town of Andes, the defendant in these suits, but that no question is raised as to the identity of these bonds with those set out in the complaint in action No. 2513.

Plaintiff also offered in evidence the coupons above referred to, which are enclosed in envelopes, marked, respectively, Plaintiffs' Exhibits Nos. 1, 2, 3, 9, 34, 51, June 12, 1884, T. P.; same received as if copied *in extenso*, subject to same objection as to bonds.

Q. Was you authorized by the parties you have named to sell these bonds and coupons to Mr. Slauson?

Objected to as irrelevant, immaterial, and improper.

A. Yes, sir.

Q. When those sales were made was there any understanding or agreement existing that any of the parties you have named should retain an interest in those bonds and coupons or any part thereof?

Objected to as above and as not calling for the best evidence.

A. No, sir.

Q. So far as you have any knowledge or information, is Mr. Slauson the sole and *bona fide* owner of all these bonds and coupons?

Objected to as immaterial and improper—calling for a conclusion of law.

A. Yes, sir.

Q. How long have you known Mr. Slauson?

A. Over 40 years. He is reputed to be a man of means.

239 (Objected to as above.)

Q. Are & were the notes you received from Mr. Slauson, to the best of your knowledge and information, collectible at the par value?

(Same objection.)

A. I think they are, and I thought so at the time I took them.

(Objected — as above.)

Q. When did you tell Mr. Slauson that the coupons which are here mentioned in suit No. 2512 were bonds that had been enjoined?

A. I told him that when I delivered them to him.

Q. Was it before or after the agreement to sell was made?

A. I will not be positive, but I think it was when the agreement was made.

Redirect:

Q. Has payment of any of the notes you have referred to, to your knowledge, ever been demanded?

A. No, sir.

Q. Will you state positively that you did not inform Mr. Slauson that the validity of the bonds and coupons delivered to Mr. Slauson in April, 1882, were questioned before the delivery took place?

A. I did not.

A. BENSON.

Subscribed and sworn to this 13th day of June, 1884, before me—

HOWARD CHIPP,

Notary Public in and for Ulster Co., N. Y.

240 Also depositions of Thomas Cornell, Harriet J. Van Deusen, David Kennedy, Samuel R. Rainey, Albert and Jacob Hoysradt, of which the following are copies:

241 THOMAS CORNELL was called and sworn on the part of the defendant:

I reside at Rondout, in the city of Kingston, N. Y.; I am president of the Rondout Savings Bank.

Q. Have you owned bonds of the town of Andes?

A. I have. I cannot remember to whom I transferred them. It was before the commencement of this suit; about the time they were building the road.

Q. Did you transfer any of them to Mrs. Harriet J. Van Deusen?

A. No, sir; nor to Columbus Van Deusen. I did not transfer any of them to Albert Slauson. I did not transfer any of them to David Kennedy. I have not transferred any of them to Anthony Benson. I do not know how many of them the Rondout Savings Bank had or how many Harriet Van Deusen had.

Q. Had you a note given by Albert Slauson about 6th or 7th April, 1882?

A. I have a note of his.

Note produced by witness and offered in evidence, of which the following is a copy:

"For value received I promise to pay the Rondout Savings Bank or order nine thousand three hundred and fifteen dollars, with interest at six per centum per annum, on demand, at my office.
"Jersey City, N. J., April 6, 1882.
"(Signed) A. SLAUSON."

(Endorsed:) Pay to the order of Thomas Cornell. A. Benson, sec't'y.

242 This note was transferred to me June 30th, 1882, for face value. I have another note given by Albert Slauson.

(Note produced by witness, of which the following is a copy:)

"For value received I promise to pay David Kennedy or order two thousand and seventy dollars, with interest at six per centum per annum, on demand, at my office.
"Jersey City, N. J., April 6, 1882.
"(Signed) A. SLAUSON."

(Endorsed:) D. Kennedy.

Note was transferred to me December 13th, 1882. I gave him eighteen hundred dollars for it.

THOMAS CORNELL.

Subscribed and sworn to before me this 13th day of June, 1884.
HOWARD CHIPPS,
Notary Public, Ulster Co., N. Y.

243 THOMAS CORNELL recalled:

I recollect that Mr. Albert Hoysradt, of Hudson, N. Y., handed me certain coupons. I passed them over to Mr. Benson on Mr. Hoysradt's account, and I understood that those were part of the coupons sold to Mr. Slauson.

Q. You handed them to Mr. Benton for the purpose of having the sale of them made to Mr. Slauson?

Objected to as immaterial and irrelevant.

A. Yes, sir; some of the bonds so sold by Mr. Benson to Mr. Slauson belonged to the Rondout Savings Bank. As Mr. Benson testified, those bonds were paid for by Mr. Slauson's note to Mr. Benson's order.

Objected to as immaterial.

Those bonds were received by the Rondout Savings Bank from Mrs. Harriet Van Deusen, as executrix of her husband. There was a negotiation for an exchange of real estate, and they were all the bonds so received from Mrs. Van Deusen.

Cross-ex.:

I paid nothing to Mr. Hoysradt for the coupons received from him and received nothing from Mr. Slauson for them when sold to him. I did not guarantee those coupons. The coupons so received from Mr. Hoysradt were due March, 1882; six coupons, $35 each, Sept., 1882; six coupons, $35 each, March, 1883; six coupons, $35 each, M'ch, 1882; 19 coupons, $17.50 each, Sept., 1882; 19 coupons, $17.50 each, M'ch, 1883; 19 coupons, $17.50, M'ch, 1882; 103 coupons, $3.50 each, Sept., 1882; 103 coupons, $3.50 each, M'ch, 1883; 103 coupons, $3.50 each. These were all the coupons
244 rec'd from Mr. Hoysradt. I cannot tell when I rec'd them nor when I transferred them. I received none of the Slauson notes originally. I now have two of them—one rec'd from the Rondout Savings Bank and one from Mr. Kennedy.

THOMAS CORNELL.

Sworn & subscribed before me this 14 day of June, 1884.

HOWARD CHIPP,
Notary Public in & for Ulster Co., N. Y.

245 HARRIET J. VAN DEUSEN was called and sworn for plaintiff:

I reside at Rondout, in the city of Kingston. I am executrix of Columbus Van Deusen, deceased.

Q. State whether as such executrix you were the owner of certain instruments purporting to be bonds of the town of Andes, bearing date September 1, 1871, signed by Andrew Armstrong, John Dickson, and D. R. Shaver, for the payment to bearer of the sum of $500, with interest, and numbered, respectively, 44 and 45, and also of five such bonds for the payment to bearer of $100 each, with interest, and numbered, respectively, 61, 64, 77, 78, 110.

A. Yes.

Q. Did you sell those bonds to any one?

A. I did. I sold them to Mr. Slauson, of Jersey City.

Q. Were you as such executrix the owner of certain other bonds of the town of Andes, of the date and the time as aforesaid, for the payment to bearer of $1,000 each, and interest, and numbered, respectively, 1, 2, 3, 4, 5, and of certain other such bonds, for the payment of $500 each, and interest, numbered, respectively, 14, 15, 17, 18, 43, 46?

A. I was. I sold them to the Rondout Savings Bank. The bonds now showed to me are the bonds to which I refer.

Said bonds were offered in evidence and marked, respectively, Pl'ff's Exhibit No. 4, No. 5, No. 6, No. 7, No. 8, No. 10, No. 11, No. 12, No. 13, No. 20, No. 23, No. 21, No. 22, No. 50, No. 37, 36,
246 and No. 29, June 12, 1884, T. P.

It is consented by counsel on both sides that said bonds be read on the trial of these actions as if the same were here set out at length.

(Same admitted under objection of def't's counsel that they are immaterial and irrelevant; that they are not the property of the pl'ff, and are not legal or valid obligations of the town of Andes.)

Q. Were you as such executrix the owner of coupons Nos. 21, 22, 23, and 24, which were attached to said bonds, signed by John Dickson, commissioner, and bearing, respectively, the number of the bond to which such coupons were attached; and, if so, did you sell such coupons to the same parties whom you sold the bonds to which they were attached?

A. I sold the coupons with the bonds.

Said coupons offered in evidence and to be produced on the trial to the same effect as if they were copied here, but subject to the same objection as taken by def't's counsel to the bonds.

For the bonds and coupons I sold to Mr. Slauson I took his notes, and — are the same notes that were offered and copied in Mr. Benson's evidence.

Q. For the bonds and coupons sold to the Rondout Savings Bank what did you receive?

(Objected to as immaterial and irrelevant.)

A. I received real estate. The transaction with Mr. Slauson was conducted on my part by Mr. Benson.

247 C. X Q. From whom did you receive these bonds?

A. They came to me by my husband's death, as executrix of Columbus Van Deusen. I do not know positively from whom he received them; my impression is that some or all were purchased from the First Na. Bank of Rondout by my husband, now deceased. I never knew that they were guaranteed at the time my husband purchased them.

Q. Did you instruct Mr. Benson to sell them to some person outside of the State of New York?

A. I did not; I gave him no instruction to whom he should sell them.

Redirect:

The indorsements on these bonds, Harriet J. Van Deusen, executrix of Columbus Van Deusen, dec'd, Feb'y 22, 1882, — in your handwriting?

Objected to as immaterial and irrelevant.

A. It is.

Q. For what purpose was that indorsement made?

Objected to as above and as improper.

A. For the purpose of sale; so that they could be sold.

HARRIETT J. VAN DEUSEN.

Subscribed and sworn to before me the 13th day of June, 1884.

HOWARD CHIPP,

Notary Public in and for Ulster Co., N. Y.

248 Dr. DAVID KENNEDY, being duly sworn for the pl'ff, says:

My name is David Kennedy; occupation that of physician & surgeon; reside in Rondout, N. Y.; I think I sold certain instruments, purporting to be bonds of the town of Andes, to Mr. Slauson, of Jersey City, N. J., in the month of April, 1882, through Mr. Anthony Benson.

Objected to.

The bonds now shown me are the bonds. Said bonds are Nos 42, for $500, heretofore offered in evidence as "Pl'ff's Exhibit No, 19, T. P.," and Nos. 65, 66, 67, 68, 69, 100, 101, 102, 103, 104, 105 106, 107, 108, 109, for $100 each, heretofore offered in evidence — "Pl'ff's Exs. Nos. 30, 31, 32, 33, 34, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, June 12, 1884, T. P."

Pl'ff offers said bonds in evidence, to be read on the trial with the same effect as if here copied in full, but under the objections of def't's counsel that they are immaterial and irrelevant, and that they are not the property of the pl'ff, and that they are not legal and valid obligations of the def't.

When I sold these bonds I also sold coupons Nos. 21, 22, 23, 24, which were attached to each of these bonds.

Said coupons offered in evidence, to be read on the trial with the same effect as if copied here in full and under the same objection as to bonds.

The coupons bear the number of the bond from which they were detached. I received on the sale of these bonds a note from Mr. Slauson, dated April 6th, 1882, to my order, which note is already in evidence.

249 Other bonds now shown witness.

They are the bonds I sold the Rondout Savings Bank. These are bonds of the town of Andes; No. 19, for $500; Nos. 60, of $100; 62, 63, 76, 79, of $100.

Objected to.

Bonds offered in evidence, marked "Pl'ff's Ex. No. 14, Nos. 25, 27, 28, 35, 38, June 12th, 1864, T. P.;" to be read on the trial with the same effect as though copied here in full, under the same objection by def't's counsel as to other bonds.

I also sold to the Rondout Savings Bank coupons Nos. 21, 22, 23, and 24, attached to these bonds. At the time of these sales I was the owner of all the bonds and coupons referred to.

Q. Did you buy them in good faith and for a valuable consideration?

Objected to as improper and irrelevant.

A. I did. I sold the bonds to the Rondout Savings Bank at 4½% premium—*i. e.*, at 104½%.

Last-mentioned coupons offered in evidence, and to be read on the trial with the same effect as though copied here in full, under same objection of def't's counsel as made on the bonds.

Each of said coupons contained the No. of the bond from which it was detached. All the coupons to which I have referred are signed with the name of John Dickson, commissioner, &c.

250 Objected to as not the best evidence.

Cross-ex.:

I did not instruct Mr. Benson to sell these bonds and coupons to some person out of the State of New York. I instructed him to sell them to the best advantage and left it to him. I have never demanded payment of the note I received from Mr. Slauson on the transfer of these bonds and coupons. I gave Mr. Slauson no writing at the time of the transfer of the bonds and coupons to him.

Redirect:

Mr. Benson paid me the money for the bonds sold to the bank.

DAVID KENNEDY.

Subscribed and sworn to before me this 13th day of June, 1884.

HOWARD CHIPP,
Notary Public in and for Ulster Co., N. Y.

251 SAMUEL R. RAINEY, sworn for defendant, says:

I reside at Hudson, N. Y.; am the secretary and treasurer of the Hudson City Savings Institution, and acting as such.

Q. Was that bank at one time the owner or holder of certain instruments purporting to be bonds of the town of Andes, Delaware Co., N. Y., dated Sept. 1st, 1871, and signed by Andrew Armstrong, John Dickson, and G. R. Shaver?

A. I don't know who they were signed by. We held bonds of that date of the town of Andes.

Q. What were the numbers and denominations of those bonds?

A.—

Nos. 21, 22, 27, 30	$1,000	each.
" 57 to 73, both inclusive	500	"
" 31, 32, 71, 72, 73, 74, 75	100	"
" 81 to 86, inclusive	100	"
" 90 to 98, "	100	"
" 157 to 164, "	100	"
" 166, 167, 169	100	"
" 171, 172	100	"
" 175 to 181, inclusive	100	"
" 183, 190, 194, 204, 207, 208, 215, 218, 219, 220, 224, 233, 234, 236, 238, 241, 242, 246, 248, 249, 250, 254, 257, 259, 261, 262, 265, 267, 268, 269, 274, 277, 278, each	100	
No. 23	1,000	
32	500	

		48	500
252		50	500
		51	500
	58		500
	59		500
	60		500
	61		500
	26		1,000
	57		500
	64		500
	65		500
	66		500
	188		100
	209		100
	211		100
	212		100
	214		100
	228		100
	243		100
	244		100
	247		100
	258		100
	260		100
	264		100
	289		100
	290		100
	292		100
		294	100
253		295	100
		296	100
	297		100
	298		100
	299		100
	300		100
	202, 252, 270		100 each.

(It is admitted that the foregoing bonds are of the form substantially as set forth in the complaint in this action (2512) and signed by the persons as therein mentioned.)

Ex. continued:

These bonds were purchased by the bank before I became sec. & treas. There were coupons attached to each of these bonds for the payment of interest. The coupons were numbered and each coupon bore the number of the bond to which it was attached. The bank does not hold those bonds or coupons now. They parted with them April 6th, 1882. I negotiated the sale of them for the bank to Albert Hoysradt, of Hudson, N. Y.

Q. What did you receive from them on the transfer?

Obj. to by pl'ff as immaterial and irrelevant.

A. I received his note for $25,800; the note was guaranteed.

Note produced and offered in evidence, of which the following is a copy:

254 "HUDSON, N. Y., *April* 6, 1882.

"On demand, for value received, I promise to pay to the Hudson City Savings Institution, of Hudson, N. Y., $25,800.00, with interest.

"ALBERT HOYSRADT."

For value received I hereby guarantee the payment of the above note.

J. W. HOYSRADT.

Q. J. W. Hoysradt was at that time (April 6, 1882) a trustee of the Hudson City Savings Institution?

A. He was.

Q. You gave Albert Hoysradt a writing at the time you received this note?

A. Yes.

Q. Where is that writing?

A. I don't know.

Q. What was its form & substance?

Obj. to by pl'ff as immaterial, irrelevant, & incompetent.

A. I don't know as to its form; its purport was that the bank would guarantee Albert Hoysradt for any ultimate loss.

Q. Were these bonds & coupons delivered on that day to Mr. Albert Hoysradt?

A. They were.

(It is admitted that the coupons set out in the complaint in action 2512 were attached to these bonds transferred to Hoysradt and are part of the coupons referred to by this witness.)

255 Q. Did you inform Albert Hoysradt that the validity of these bonds was in litigation?

Obj. to by pl'ff — immaterial, irrelevant, & incompetent.

A. I did not.

Q. You received no money for these bonds?

Same obj. as above.

A. I did not.

Q. Payment of this note has never been demanded?

Obj. to same as above.

A. Payment has never been demanded.

Cross-ex. by pl'ff:

Q. From whom did your bank receive these bonds?

Obj. to as immaterial & irrel't.

A. They were purchased for us as follows:
$15,000 by the Nat'l Hudson River Bank of Hudson, N. Y., from the 1st National Bank of Andes.
$5,000.00 purchased by us from George B. Fairchild.
$5,500.00 purchased for us by the Nat'l Hudson River Bank from the 1st National Bank of Andes.
The date of the $15,000 purchase was May 7, 1880; that of $5,000 was May 8, 1880, & that of $5,500 was June 1, 1880. There was another purchase of $300 made June 2, 1880, of the 1st Nat'l Bank of Andes through the Hudson River Bank.
We paid for these as follows:
The $15,000 cost $15,194.49.
" $5,000 " $5,467.00.
" $5,500 " $5,600.25.
" $300 " $305.75.

256 Redirect:

Q. Is this note testified to by you the only writing received by you from Mr. Hoysradt at the time of the transfer?
A. It is.

SAM'L R. RAINEY.

Taken, subscribed, read over & sworn to before me this 14th day of June, 1884.

JOHN V. WHITBECK,
Notary Public, Columbia Co., N. Y.

257 ALBERT HOYSRADT, sworn for defendant, says:

I reside at Hudson, N. Y.
Q. Did you, on the 6th day of April, 1882, receive from Sam'l R. Rainey certain instruments purporting to be bonds of the town of Andes, Delaware county, N. Y., dated Sep. 1, 1871, & signed by Andrew Armstrong, John Dixon, and G. R. Shaver?
A. As to date of bonds & signature, I can't say. I did receive certain bonds of the dates, and signed, I believe, as stated in the question, and also the coupons attached thereto. Those bonds were of the number and denomination, respectively, as set forth in the paper now produced by me.
Q. Did you receive that paper from Mr. Rainey on the day of the transfer of the bonds to you?
A. I did.

Paper offered in ev., of which the following is a copy:

"Whereas the Hudson City Savings Institution, of the city of Hudson, in the State of New York, has this day, for a valuable consideration, to wit, the sum of twenty-five thousand and eight hundred dollars, sold, transferred, and delivered to Albert Hoysradt, of the said city of Hudson, the following bonds of the town of Andes, in the county of Delaware, in the State of New York, the said bonds being a part of those issued by said town of Andes in payment of

the subscription of said town to the stock of the Delhi and Middletown Railroad Company, and being of the denominations and numbers following, to wit:

258 Nos. 21, 22, 23, 26, 27, and 30, of the denomination of one thousand dollars each.

Nos. 32, 48, 50, 51, 57, 58, 59, 60, 61, 64, 66, 67, 68, 65, 69, 70, 71, 72, 73, of the denomination of five hundred dollars each.

Nos. 86, 82, 236, 218, 93, 169, 171, 262, 215, 234, 219, 94, 224, 220, 75, 91, 31, 32, 73, 71, 72, 83, 74, 81, 84, 207, 90, 233, 254, 252, 270, 202, 204, 194, 85, 190, 96, 98, 95, 97, 242, 157, 159, 238, 241, 158, 160, 246, 161, 162, 248, 249, 257, 268, 250, 163, 265, 164, 259, 172, 267, 261, 166, 167, 269, 181, 92, 183, 208, 180, 278, 179, 277, 178, 175, 177, 176, 274, 297, 295, 291, 296, 298, 293, 294, 292, 290, 289, 209, 214, 189, 212, 188, 300, 211, 299, 243, 244, 247, 260, 228, 258, 264, of the denomination of one hundred dollars each:

Now, therefore, this indenture witnesseth: That the said Hudson City Savings Institution, party of the first part, for itself and its successors, in selling the aforesaid bonds and in consideration of the payment to it of the above specified sum of twenty-five thousand and eight hundred dollars, the receipt whereof is hereby acknowledged by Albert Hoysradt, of the said city of Hudson, party of the second part, hereby agrees with said party of the second part to guarantee, and hereby does guarantee, to the said party of the second part and his heirs and assigns the payment in full of the face value of the above-described bonds and of the coupons which have already fallen due or may hereafter fall due thereon, and of each and every of said bonds and coupons, according to the terms and

259 conditions and at the time set forth in said bonds and coupons

And the said party of the first part, in consideration as aforesaid, further agrees with said party of the second part to indemnify and keep harmless the said party of the second part and his heirs & assigns against any necessary or proper expense or costs to which the said party of the second part may be put in enforcing or attempting to enforce the payment and collection of the bonds and coupons aforesaid or any or either of them.

In testimony whereof the party of the first part has caused its corporate seal to be affixed to this instrument and the same to be signed by its secretary & treasurer this sixth day of April, 1882.

HUDSON CITY SAVINGS INSTITUTION,
By SAM'L R. RAINEY, [L. S.]
Secretary & Treasurer."

Said papers received in evidence.

Ex. continued:

Q. Was that the only writing given you by Mr. Rainey at the time of the transfer?

A. It was.

Q. What did you pay for the bonds & coupons that day transferred to you by Mr. Rainey?

A. I gave my note, I think, for $25,800; that note was guaranteed by my father, Jacob W. Hoysradt.

Q. You know that the validity of those bonds was in litigation?

260 Obj. to as immaterial, irrel't, incompetent.

A. My recollection is that I had heard something about it.

Q. Had you heard that an injunction had been issued restraining the holders from transferring those bonds?

Same obj. as above.

A. I think I had.

Q. You had been so informed by the officers of the savings bank?

A. I had heard, but from whom I cannot tell.

Q. Did Mr. Rainey inform you that he wished to transfer them in order to get them out of the reach of the injunction, or words to that effect?

Obj. same as above.

A. No, sir; he did not say anything of that kind.

Q. Were these bonds & coupons delivered to you on that day?

A. Yes; I think they were.

Q. Are they still in your possession?

A. No, sir.

Q. To whom did you transfer them?

A. I delivered the bonds to Anthony Benson, of Rondout, for negotiation & sale.

Q. All of them—bonds & coupons?

A. Yes; but as to the coupons of Sept., 1882, & Mar., 1883, I am not sure but those may have been delivered to Thomas Cornell, & such delivery was in spring of 1883; all the other to Ben-

261 son, and about a year later. The coupons that went to Cornell were, I think, Nos. 21, 22, 23. The coupons 21, 22, 23 on all these bonds were all deliv'd on same day to same person.

Q. What did you receive for these bonds & coupons?

A. For the coupons for Mar. & Sep., '82, & Mar., '83, I am to have the note of Albert Slauson, of Jersey City.

Q. Have you received anything?

A. I have not as yet.

Q. Was any writing given by you to Mr. Benson or Mr. Cornell or received by you from Benson or Cornell at the time of the delivery to them of these bonds & coupons?

A. Nothing, unless possibly a receipt, and of that I am not positive, setting forth the numbers of the coupons of Mar. & Sep., '82, & Mar., 1883.

Q. Have you that receipt?

A. I cannot say whether I have or not, and I am not sure one was given.

Cross-ex.:

Q. You say that you agreed to give a guaranty similar to that in evidence and you intend to do so?

Obj't. to.

A. Yes.

Q. The coupons attached to these bonds were numbered, respectively, from 1 to 60, inclusive, and signed John Dixon, com'r, were they not?

A. Yes.

Q. Please explain the circumstances why & how you are to
262 have Mr. Slauson's note for the coupons of Mar. & Sep., '82, & Mar., '83.

A. Those coupons were left with Mr. Benson or Cornell for negotiation and sale and were sold, I understand, to Mr. Slauson. I am to receive his note. I have not received it personally, but I am told it has been delivered to one of them on my account. I refer to Thomas Cornell, of Rondout. He is pres't of the Rondout Savings Bank, of which Benson is secretary.

Q. Are you & your father and were you at the time you received these bonds and coupons men of means sufficient to meet the obligations you gave for them?

Obj. to as immaterial and irrelevant.

A. I would not want to say. I was or am worth $25,000, but my father was a man of ample means to do so.

Q. At the time you bo't these bonds and coupons had you received information that the injunction respecting them had been dissolved?

A. Yes.

Q. At time these bonds and coupons were delivered by you did you know or had you received information that the injunction had been dissolved?

Objected to same as above.

A. Yes. I have never been enjoined, and at time I received the bonds and at time I sold I did not know nor had been informed of any injunction existing.

263 Redirect:

Q. Did you request Cornell or Benson to negotiate these bonds and coupons to some person residing out of the State of New York?

Obj. to — immaterial, irrelevant, incompetent.

A. No, sir.

Q. Or words to that effect?

A. No, sir.

Q. Did they or either of them inform you that the bonds or coupons could be sold to Mr. Slauson?

A. No, sir.

Q. Then at that time they did not agree that you should have his note?

A. No, sir; nothing said at that time as to what I should have for the bonds and coupons.

ALBERT HOYSRADT.

Taken, subscribed, read over, and sworn to before me this 14th day of June, 1884.

JOHN M. WHITBECK,
Notary Public, Columbia Co., N. Y.

264 JACOB W. HOYSRADT, sworn for defendant, says:

I reside in Hudson, and am the father of the last witness.

Q. At the time of the transfer to him of the bonds and coupons testified to by him did you receive any writing from Sam'l R. Rainey?

A. No, sir.

Q. Were those bonds & coupons then in your possession?

A. No.

Q. You are a trustee of the Hudson City Savings Institution?

A. I am.

Q. Were they at that time in the vaults of the bank?

A. I don't know.

Q. Did you give to Mr. Rainey any writing other than the guarantee of the note?

A. I did not.

Q. You knew the bonds were in litigation?

Objt. to as immaterial & incompetent.

A. I knew there had been an injunction, but did not know the condition then of the litigation.

Q. Did you know that their validity was in litigation?

A. I knew their validity had been questioned; I did not know it was in litigation.

Cross-ex.:

I had heard that the injunction had been dissolved.

265 Redirect:

Q. You knew that an action was still pending on these bonds?

A. No; I did not know that.

Recross-ex.:

I knew that there had been litigation as to town of Andes bonds, but did not know there was any as to these particular bonds.

J. W. HOYSRADT.

Taken, subscribed, read over, and sworn to before me this 14th day of June, 1884.

JOHN V. WHITBECK,
Notary Public, Columbia Co., N. Y.

266 Defendant then offered in evidence the original assessment-roll of the town of Andes for the year 1870, which defendant claimed would show that the signatures to the petitions or consents put in evidence were not those of a majority of the tax-payers of the town appearing upon said roll and owning or representing a majority of the taxable property of the town as shown by said roll; also which defendant claimed would show that the signatures to consents Nos. 1, 4, and 14 were those of tax-payers appearing on said roll and assessed thereon to the amount of $74,000, which was objected to by plaintiff and the objection sustained; to which the defendant excepted.

Defendant put in evidence the senate and assembly journals of the Legislature of 1869; it received 71 votes in favor of its passage in the assembly and 19 votes in the Senate.

The evidence here closed.

267 Defendant's counsel asks permission, under the stipulation and order made in June, to submit the question of the *bona fides*, and also upon the question of the collusive transfer of the coupons in suit and upon the question of ownership.

He asks to submit each of these questions to a jury.

Motion is denied in each case and exception for defendant.

The court then made an order consolidating the two actions, which order may be found in the judgment-roll.

The court then made an order, decision, and finding which may be found in the judgment-roll.

The defendant thereupon excepted to such decision, finding, and order, and filed exceptions thereto, of which the following is a copy:

268 *Def't's Exceptions.*

United States Circuit Court, Northern District of New York.

ALBERT SLAUSON *against* THE TOWN OF ANDES.

The defendant excepts to the findings and decision of the court made and filed in and with the order of judgment herein filed Dec. 4, 1884, as follows:

First.

To the general finding for the plaintiff upon the facts.

Second.

To the finding in this action, now consolidated, there is due the plaintiff, Albert Slauson, from the defendant, The Town of Andes, the sum of five thousand three hundred and sixteen and $\frac{46}{100}$ dollars, being the aggregate of the sums due in both actions at the day of trial, on Oct. 1, 1884.

Third.

To the finding that of said amount there was due the plaintiff from the defendant, in action No. 2512, $3,047.62.

Fourth.

To the finding that of said amount there was due the plaintiff from the defendant, in action No. 2513, $2,264.84, with interest from Oct. 1, 1884.

Fifth.

To the finding and direction of judgment in favor of plain-
269 tiff for the aforesaid sums, and in accordance with the aforesaid findings, with costs and disbursements.

Dated March 24th, 1885.

I. H. MAYNARD AND
C. M. SHAW,
Att'ys for Def't.

Stamford, Del. Co., N. Y.

To Matthew Daly, Esq., att'y for pl't'ff, and W. S. Doolittle, Esq., clerk.

Filed Nov. 11, 1885.

W. S. DOOLITTLE, *Clerk.*

And because none of the aforesaid rulings, decisions, and exceptions appear in the record in said case the said judge presiding at said trial hath hereunto set his hand and seal the 13 day of October, 1885.

ALFRED C. COXE. (L. S.)

(Indorsed:) Bill of exceptions. Filed October 21, 1885. W. S. Doolittle, clerk.

270 *Opinion.*

United States Circuit Court, Northern District of New York.

ALBERT SLAUSON
vs.
THE TOWN OF ANDES. } Law. No. 2512.

SAME
vs.
SAME. } Law. No. 2513.

The plaintiff sues upon coupons cut from bonds issued by the defendant in aid of the Delhi and Middletown Railroad Company pursuant to the provisions of chapter 907 of the laws of New York for 1869.

The defendant has regularly paid the interest on the bonds for a period of about ten years, and has also paid a part of the principal.

The main defenses are as follows:

First. That the county judge never obtained jurisdiction, for the reason that the consents of about one-fourth of the petitioners contained a condition that the road should be located upon a particular route.

Second. That the notice required by the first section of the act is defective in not specifying a place of hearing.

Third. That no recovery can be had upon the coupons formerly owned by Columbus Van Dusen, for the reason that he indorsed upon the bonds a statement, pursuant to law, that they were
271 his property and could only be transferred by his indorsement, thereby destroying their negotiability forever. (Rev. Stats. N. Y., 7 ed., vol. 3, pages 2247, '48.

Fourth. That the suit should be dismissed for the reason that another action is pending in the State courts, which, though between different parties, involves a consideration of the same questions.

Fifth. That several of the bonds are not sealed and others are not registered in the office of the county clerk.

Sixth. That the bonds are made payable in less than thirty years from the time of their issue, in violation of section four of the act.

Seventh. That the petition presented to the county judge was not properly verified.

Eighth. That the suit should be dismissed under provisions of section five of the act of March 3, 1875, as having been collusively brought.

Upon the trial the defendant moved for an order consolidating the two actions. The decision on this motion was reserved.

J. B. Gleason, for the plaintiff; I. H. Maynard, for the defendant.

COXE, *J.*:

Regarding those defenses, which strike at the validity of the whole issue of bonds, it is thought that the doctrine contended for
272 by the plaintiff is not only correct in principle, but is *res adjudicata*, so far, at least, as this court is concerned. An extended discussion, therefore, of the questions involved is not essential.

The chief contention has reference to the effect of the conditional consents. It is asserted that the defect in the petition is radical; that the county judge never obtained jurisdiction; that all the proceedings before him were unauthorized, null, and void; that the bonds never had a legal inception. If these premises are well founded the conclusion that the bonds are invalid correctly follows. I do not think, however, that they are well founded.

This question was discussed and the opposing views were presented with great learning and ability by the court of appeals of New York in the case of Craig *vs.* this defendant (93 N. Y., 405). Suffice it to say that the opinion of Judge Finch, on behalf of the minority, is in perfect accord with the decisions of this court. The argument in favor of jurisdiction is there stated with rare cogency, and nothing need be added to the clear and perspicuous reasoning of that learned judge.

See also Calhoun *vs.* Delhi and Middletown Railroad Company, 28 Hun., 379.

People *ex rel.* Hong *vs.* Peck, 4 Lansing, 528.

But this court has passed upon the identical question, upholding consents containing similar conditions.

Munson *vs.* The Town of Lyons, 12 Blatchf. C. C. R., 539. Affirmed 99 U. S., 684.

273 It is said that the notice of the county judge was imperfect; if so, and this is by no means clear (Calhoun *vs.* Railroad, *supra*), the defect was not a jurisdictional one; it was at most an irregularity which cannot be taken advantage of in an action of this character.

Miller *v.* Town of Berlin, 13 Blatchf. C. C. R., 245.

The precise phraseology of the notice placed on certain of the bonds by Columbus Van Dusen is not before me; but, let it be conceded that their negotiable character was, for the time being, destroyed, it is thought that it was restored by the subsequent indorsement. The same hand that framed the notice could efface it. It was the evident intention of the holders of these bonds to make them again negotiable. I think they succeeded in doing so. The statutes referred to (3 R. S. of N. Y., 7 ed., pp. 2247, '48) were passed for the protection of owners and holders; the bonds and coupons can be made negotiable or non-negotiable at their option. The promise of the obligors is to pay the bearer; they cannot complain when they are sued upon coupons in the ordinary form.

The defenses based upon the pendency of an equity action in the State courts and the absence of seals from certain of the bonds are disposed of respectively by the decision of this court in Currie *vs.* Lewiston, 21 Blatchf. C. C. R., 236, 238; S. C., 15 Fed. Rep., 377, and the decision of the Supreme Court in Draper *vs.* Town of Springport, 104 U. S., 501.

None of the authorities cited by the learned counsel for the 274 defendant goes far enough to justify the court in dismissing the action under the provision of the 5th section of the act of 1875.

Transfers bearing close similarity to those developed here have been repeatedly upheld in this court. If a new rule is to be established the supreme court should proclaim it.

It is idle to gainsay that the almost uniform course of decisions in our State courts adverse to the validity of municipal bonds has driven them into exile, where their value is doubtless enhanced by the fact that their owners can secure redress in the courts of the United States. That they have been transferred in many instances to avoid a hostile form, and with no other object, is certainly a plausible presumption.

But I find no case of dismissal where the legal title has been transferred for a valuable consideration and without resulting benefit to the vendor.

It will not do to permit conjecture to take the place of proof or

allow suspicion, however strong, to supply a necessary link in the chain of evidence.

Orleans *vs.* Platt, 99 U. S., 676–'9; McCall *v.* Town of Hancock, 20 Blatchf. C. C. R., 344; Perrine *v.* Town of Thompson, 17 Blatchf. C. C. R., 18; Third Nat. B'k *v.* Town of Seneca Falls, 16 Fed. Rep., 783, and cases cited.

The other objections urged by the defendant have been examined, but none of them are deemed tenable.

275 The plaintiff is entitled to judgment for the amount of the coupons and interest.

That these actions should be consolidated there can be little doubt. They were brought at very nearly the same time, they involve the same defences, and, irrespective of the question of appeal, there is no reason why there should be two suits where one will do as well. (U. S. Rev. Stats., section 921; Conkling's Trea., 5 ed., 335; N. Y. Civ. Proc., section 817.)

The amount indirectly involved is over one hundred thousand dollars. Some of the questions have not been passed upon by the supreme court, and it is manifestly for the interest of both parties that this contention should be finally determined by a decision in which all must acquiesce.

(Indorsed:) Decision. Filed Nov. 12th, 1884.

276 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the northern district of New York, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Albert Slauson, plaintiff, and The Town of Andes, defendant, a manifest error hath happened, to the great damage of the said defendant, The Town of Andes, as by the complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court, the 13th day of October, in the year of our Lord one thousand eight hundred and eighty-five.

[Seal of the U. S. Circuit Court, Northern District N. Y.]

W. S. DOOLITTLE, *Clerk.*

Allowed by—
ALFRED C. COXE.

[Endorsed:] 2513. Writ of error. Albert Slauson *vs.* The Town of Andes. U. S. circuit court, N. D. of N. Y. Filed Oct. 13, 1885. W. S. Doolittle, clerk. D. S. N.

277 *Bond.*

Know all men by these presents that we, Walter Armstrong, Asael Bryant, John A. Gladstone, Malcolm Calhoun, Worden Brothers (composed of Roland and Bloomer Worden), and William S. Doig, all of the town of Andes, in the county of Delaware, are held and firmly bound unto Albert Slauson in the full and just sum of ten thousand dollars, to be paid to the said Albert Slausen, his certain attorneys, executors, and administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly & severally, by these presents.

Sealed with our seals and dated this fifth day of October, 1885.

Whereas lately, at a session of the U. S. circuit court for the northern dis'ct of New York, in a suit depending in said court between Albert Slauson, plaintiff, and The Town of Andes, defendant, a final judgment was rendered against the said defendant, The Town of Andes, Dec. 17th, 1884, in the sum of five thousand six hundred & forty-one & $\frac{84}{100}$ ($5,641.84) dollars, and the said defendant, The Town of Andes, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid suit, and a citation directed to the said Albert Slauson, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., the second Monday of October, 1885:

Now, the condition of this bond is such that if the said Town of Andes shall prosecute said writ of error to effect
278 and answer all damages and costs if the Town of Andes fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

WALTER ARMSTRONG. [SEAL.]
A. BRYANT. [SEAL.]
JNO. A. GLADSTONE. [SEAL.]
MALCOLM CALHOUN. [SEAL.]
WORDEN BROS. [SEAL.]
WM. S. DOIG. [SEAL.]

Sealed & delivered in presence of—
B. JOHNSON.

STATE OF NEW YORK, *County of Delaware,* } *ss*:

On this 5th day of October, 1885, before me, the subscriber, appeared Walter Armstrong, Asael Byant, John A. Gladstone, and Roland Worden, Bloomer Worden (composing the firm of Worden Brothers), and William S. Doig appeared October 6th, 1885, to me personally known to be the same persons described in and who executed the above undertaking, & severally acknowledged that they executed the same.

BURNA JOHNSON,
Notary Public.

STATE OF NEW YORK, } ss:
County of Delaware, }

Walter Armstrong and Asael Bryant, John A. Gladstone, Malcolm Calhoun, Roland Worden, and William S. Doig, being severally sworn, each for himself says — the said Walter Armstrong, that he is a resident & freeholder of the county of Delaware, State of New York, and that he is worth the sum of $2,000 over and above all debts & liabilities which he owes or has incurred, exclusive of property exempt by law from levy and sale under an execution;
279 and the said Asael Bryant, for himself, says that he is a resident of Delaware Co., N. Y., & worth the sum of $2,000 over and above all debts and liabilities which he owes or has incurred, exclusive of property exempt by law from levy and sale under an execution; and the said John A. Gladstone, for himself, says that he is worth the sum of $2,000 over and above all debts and liabilities which he owes or has incurred, exclusive of property exempt by law from levy and sale under an execution, and that he is a resident of Delaware county & State of New York; and the said Malcolm Calhoun, for himself, says that he is a resident of Delaware county, New York, and that he is worth the sum of $2,000 over and above all debts & liabilities which he owes or has incurred, exclusive of property exempt by law from levy and sale under an execution; and the said Roland Worden, for himself, says that the firm of Worden Brothers—himself & Bloomer Worden—are worth the sum of $2,000 over & above all debts & liabilities which they owe or have incurred, exclusive of property exempt by law from levy and sale under an execution, and that they are residents of Delaware county, New York, and are freeholders; and the said William S. Doig, for himself, says that he is a resident of Delaware county & State of New York, and that he is worth the sum of $5,000.00 over and above all debts or liabilities which he owes or has incurred, exclusive
280 of property exempt by law from levy and sale under an execution.

WALTER ARMSTRONG.
A. BRYANT.
JNO. A. GLADSTONE.
MALCOLM CALHOUN.
WORDEN BROS.
WM. S. DOIG.

Sworn & subscribed before me Oct. 5th, 1885, except William S. Doig, who was duly sworn October 6th, 1885.

BURNA JOHNSON,
Notary Public.

(Indorsed:) Bond on writ of error. Approve of the within bond, both as to its form and the sufficiency of the sureties. Utica, Oct. 13th, 1885. Alfred C. Coxe. Filed Oct. 13, 1885. W. S. Doolittle, clerk.

281 THE UNITED STATES OF AMERICA, *ss:*

To Albert Slauson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of New York, wherein The Town of Andes is plaintiff in error and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court, this 13th day of October, in the year of our Lord one thousand eight hundred and eighty-five.

ALFRED C. COXE,
U. S. Dist. Judge, N. D. of N. Y.

[Endorsed:] 2513. U. S. Supreme Court. The Town of Andes, pl'ff in error, *vs.* Albert Slauson, def't in error. Citation. Original. U. S. circuit court, N. D. of N. Y. Filed Nov. 11, 1885. W. S. Doolittle, clerk. D. S.

[In pencil:] Return this to cl'k of circuit c't with proof of service.

282 STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

U. S. Supreme Court.

THE TOWN OF ANDES, Pl'ff in Error,
ag't
ALBERT SLAUSON, Def't in Error.

George E. Simons, being duly sworn, deposes and says that he is twenty-one years of age and upwards, and that on the seventh day of November, 1885, he personally served on Albert Slauson, defendant in error above named, a copy of the citation of the Supreme Court of the United States of America in the above-entitled action, dated October 13th, 1885, at No. 34 Dey street, in the said city of New York, and that he knew the said Albert Slauson to be the same individual described in and mentioned in the said citation and defendant in error in said entitled action.

GEORGE E. SIMONS.

Sworn to and subscribed before me at the new court house, in the city of New York, this 7th day of November, 1885.

[Seal Superior Court of the City of New York.]

JNO. McR. McCARTHY,
Deputy Clerk, Superior Court of the City of New York.

283 UNITED STATES OF AMERICA, } ss:
Northern District of New York, }

I, William S. Doolittle, clerk of the circuit court of the United States of America for the northern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 282, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Albert Slauson *vs.* The Town of Andes as the same remains of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Utica, in the northern district of New York, in the second circuit, this 17th day of December, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the said United States the one hundred and tenth.

[Seal of the U. S. Circuit Court, Northern District N. Y.]

W. S. DOOLITTLE, *Clerk.*

Endorsed on cover: N. New York C. C. U. S. No. 225. The Town of Andes, plaintiff in error, *vs.* Albert Slauson. Filed February 24, 1886.

U. S. Supreme Court.

No. 225.

THE TOWN OF ANDES,

PLAINTIFF IN ERROR,

vs.

ALBERT SLAUSON,

DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

I. H. MAYNARD,
Counsel,
STAMFORD, N. Y.

WASHINGTON, D. C.
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1889.

United States Supreme Court.

THE TOWN OF ANDES,
PLAINTIFF IN ERROR,

v.

ALBERT SLAUSON,
DEFENDANT IN ERROR.

No. 225.

Writ of error by the Town of Andes, the defendant in the court below, to review a judgment entered in the Circuit Court of the United States for the Northern District of New York, in favor of Albert Slauson, plaintiff in that Court, and defendant in error here, on the direction of District Judge, Hon. A. C. Coxe, on the trial of the case before him in October, 1884.

An order was made at the June circuit, 1884, that the actions pass said term, and be tried before Judge Coxe, at his chambers at Utica, without a jury, with the same force and effect as if tried at a circuit term of this Court; and if it should appear to said Judge upon such trial that there were questions of fact arising upon the issues therein the same were to be submitted to a jury at the November term, provided that the questions of fact were of such a character that the Judge would submit them to a jury if one were present. (Folios 105 and 106.)

There were originally two actions, Nos. 2512 and 2513, in the court below, which were consolidated into one action by order of the court. (Folios 107 and 108.)

At the close of the evidence the plaintiff in error asked permission to submit certain questions to a jury, which was denied, the court holding that there was no question to be submitted, and the court then directed judgment in favor of the plaintiffs for $5,316.46 recovery and costs of the action, upon a general finding for the plaintiff upon the facts, and a finding that there was due to the plaintiff in the court below that sum, and judgment was entered accordingly for $5,641.84 December 13, 1884.

The defendant below excepted to the refusal of the court to submit the case to a jury, and also excepted to each of the findings of the court, both of fact and of law. (Folios 267–270.)

The two actions which were consolidated were brought in the court below, No. 2512 on January 17, and No. 2513 on January 21, 1884.

The complaint in No. 2512 is found at folios 3 to 62, and in No. 2513 at folios 69 to 97.

The answer is the same in both cases, and puts in issue every allegation of the complaint, excepting the allegation that the town of Andes is a municipal corporation, or town, duly created and existing under and by virtue of the laws of the State of New York, and is a town in the county of Delaware, in the Northern District of New York.

The actions were brought upon coupons cut from bonds alleged to have been issued by commissioners appointed by the County Judge of Delaware county, in 1871, to subscribe to the stock of the Delhi and Middletown Railroad Company, and to issue bonds in payment thereof. The form of the bond and coupon is given at folios 5 to 7.

The bonds were drawn with interest at seven per cent.

per annum, payable, semi-annually, on the first days of March and September in each year, and the coupons involved in these actions were those which became due on the first days of March and September, 1882, and the first day of March, 1883.

The proceedings by which it was sought to bond the town of Andes in aid of the Delhi and Middletown Railroad Company were taken under chapter 907 of the laws of the State of New York, passed May 18, 1869. (Session Laws of 1869, p. 2303.)

In an action brought by the holder of certain coupons against the town, the Court of Appeals of the State of New York, in October, 1883, held that the bonds were null and void, and no recovery could be had thereon (Craig *v.* Town of Andes, 93 N. Y., 405), upon the ground that the petition filed with the County Judge upon the initiation of the proceedings before him was conditional, and, therefore, conferred no jurisdiction upon that officer to proceed and act under the provisions of the aforesaid chapter 907 of the laws of 1869. There were several other grounds upon which the validity of the bonds was contested in that action, but the court having found that the proceedings before the County Judge were a nullity for the reason above stated, say, at page 415, that it is unnecessary to consider the other grounds of defence made by the town.

The petition presented to the County Judge was upon nineteen pieces of paper, which will be found at folios 119 to 138, and at folios 187 to 191. These papers were all presented to the County Judge at the same time and filed by him as the basis of the proceeding, and numbers 1, 4, and 14, given at folios 187 to 191, contain conditions to the effect that the road should be located by a certain route, and one of the papers known as No. 7 had a verification endorsed upon it which will be found at folios 119 and 120.

The petition was filed May 6, 1871, and on that day the County Judge issued a notice, a copy of which will be found at folio 138, to the effect that he should proceed on the 22d day of May next at one o'clock to take proof of the facts set forth in the petition as to the number of tax-payers joining in such petition, and as to the amount of taxable property represented by them. No place was specified in the notice where the hearing was to be had, nor did the order for the notice, which is given in the same folio, specify any place of hearing.

On the 22d day of May, 1871, the County Judge made an order in the matter, which will be found at folio 140, adjudging and determining that the petitioners named in the petition represented a majority of the tax-payers of the town of Andes, as shown by the last preceding tax-list or assessment-roll, and represented a majority of the taxable property upon such list or roll, and on the same day he made a certificate in writing appointing Andrew Hawver, John Dickson, and Andrew Armstrong commissioners for the town of Andes, to carry into effect the provisions of the act of 1869, and to issue bonds and take stock in the Delhi and Middletown Railroad. Bonds to the amount of ninety-eight thousand dollars were issued by the commissioners between November 16, 1871, and December, 1872, and were all delivered to the Treasurer of the Railroad Company (folio 148), and before any of the bonds were issued, the Railroad Company, by its President, entered into an agreement with the commissioners that the avails of the bonds were only to be expended and used for the construction and equipment of the road in and through the town of Andes. (Folio 149.)

This agreement was not kept, but the President of the Company afterwards refused to carry it out. (Folios 150 and 151).

The Delhi and Middletown Railroad was projected to run from Arkville or Dean's Corners, in Delaware County, to Delhi, the county-seat of the county, through the towns of Middletown, Andes, Bovina, and Delhi. (Folio 115.)

A map and profile of the Delhi and Middletown Railroad Company was filed March 4, 1871, in the Delaware County Clerk's Office, with a certificate thereon which will be found at folios 180 and 181, made by the President and Chief Engineer, who certify that it is "a correct map and profile of the route intended to be adopted by said company for their route," &c. Another map was filed May 1, 1872, changing the route from Lumberville to Shavertown.

The Delhi and Middletown Railroad was never built or operated through the town of Andes, and, in fact, no part of the road has ever been constructed and put in operation. (Folio 150.)

In 1872 the property of the company and its franchise were mortgaged to secure the payment of bonds then issued, and this mortgage was foreclosed in 1881, and all the property and franchises of the company sold, and the stock cut off, and the amount realized was insufficient to pay the bonds issued by the railroad company, and the stockholders received nothing. (Folios 185 and 186.)

About the time that the action of Craig against the town of Andes was brought, one Malcolm Calhoun and twenty-five other tax-payers of the the town of Andes brought an action, under the statutes of the State of New York authorizing them so to do, against the supervisor of the town and certain bondholders for the purpose of restraining the collection of their bonds and coupons, and to prevent the levying of taxes upon the property of the town for their payment, and to have the defendant bondholders perpetually enjoined from disposing of their bonds, and

to have the bonds brought into court to be cancelled and destroyed upon the ground that they were not valid obligations of the town, and had never been lawfully issued. (Folios 193 to 218.)

And a preliminary injunction was obtained, which was dissolved on April 6, 1882, but the action is still pending.

Slauson, the plaintiff in the court below, is a confectioner, residing in Jersey City, but doing business in New York city.

With reference to the coupons described in the complaint in No. 1, it appears that these coupons were all cut from bonds which were held by the Hudson City Savings Institution, who is also a defendant in the equity action, and held bonds to the amount of $25,800. When the preliminary injunction was dissolved on April 6, it is claimed they were delivered to Albert Hoysradt, who was a son of J. W. Hoysradt, who was a trustee of the Hudson City Savings Institution. Albert paid no money, but gave his note for the whole amount, on demand, with interest. Payment of that note was guaranteed by his father, the trustee of the institution, and, at the same time, the Hudson City Savings Institution, by Samuel R. Rainey, its secretary and treasurer, executed a bond to Albert Hoysradt, reciting the alleged transfer, which contained the following provision:

"Now, therefore, this indenture witnesseth: That the said Hudson City Savings Institution, party of the first part, for itself and its successors in selling the aforesaid bonds, and in payment to it of the above specified sum of $25,800, the receipt whereof is hereby acknowledged by Albert Hoysradt, of the said city of Hudson, party of the second part, hereby agrees with said party of the second part to guarantee, and hereby does guarantee, to the said party of the second part and his heirs and assigns, the pay-

ment in full of the face value of the above-described bonds and of the coupons which have already fallen due, or may hereafter fall due thereon, and of each and every of said bonds and coupons according to the terms and conditions and at the time set forth in said bond and coupons.

"And the said party of the first part, in consideration as aforesaid, further agrees with said party of the second part to indemnify and keep harmless the said party of the second part, his heirs and assigns, against any necessary expense or costs to which the said party of the second part may be put in enforcing, or attempting to enforce, the payment and collection of the bonds and coupons aforesaid, or any or either of them." (Folios 251 to 264.)

Albert Hoysradt delivered the coupons taken from these bonds to Thomas Cornell without receiving anything therefor. Cornell handed them to Anthony Benson, who was the treasurer of the Rondout Savings Bank, also one of the defendant bondholders in the equity action referred to, and which claimed at that time to hold nine thousand dollars of these bonds, to be disposed of, and Benson paid neither Cornell nor Hoysradt anything for them and delivered them to Slauson, Nov. 13, 1883, and received from him his note payable to Benson or order for $2,709, with interest at six per cent., on demand, at his office in Jersey City. (Folios 235 and 243 and 245.)

And upon this subject he further testified (at folio 236):

"Q. Did you inform him (Slauson) that the legality of the bonds upon which these coupons had been detached was in litigation?

"A. I don't think I did in that way.

"Q. Or anything to that effect?

"A. I think I did in this way: That I presumed that these coupons were from some bonds that had been enjoined.

"Q. And did you tell him that an action was pending in the N. Y. State Court upon those bonds?

"A. I told him that I presumed they stood in the same condition as the other bonds that I had sold him on the 6th of April, 1882. We had talked about that an action was pending in those Courts about those bonds; that they had been enjoined; that the injunction had been dissolved, and an appeal was then pending from the order dissolving it.

"Q. Did you tell that you wanted to transfer these coupons to some person residing outside of the State of New York?

"A. Yes, sir.

"Q. Did you tell him that by so doing an action could be brought upon them in the United States Courts?

"A. I did."

The note is still in the possession of Benson, and payment has never been demanded. (Folio 239.)

With reference to the coupons which are described in the complaint, No. 2513, Mr. Slauson claims to have purchased them together with the bonds, amounting to $14,600, from which they were cut, on April 6, 1882, the day that the preliminary injunction was dissolved, and to have made the purchase from Benson, the treasurer of the Rondout Savings Bank, which claimed at that time to hold $9,000 of these bonds, and David Kennedy, another defendant bondholder, in the amount of $2,000, for whom Benson claimed to be acting, and Mrs. Harriet Van Deusen, another defendant bondholder, in the amount of $1,500, for whom Benson also claimed to be acting, and Benson himself claimed to be the owner of $2,100, which were not involved in the equity suit.

Slauson paid no money upon the purchase, but gave his note to the several parties for their respective amounts, with interest at six per cent., payable at his office in Jersey City on demand, and received from Benson a writing, of which the following is a copy:

"JERSEY CITY, N. J., *April* 6, 1882.

"I have this day sold and delivered to A. Slauson fourteen thousand six hundred dollars of the town of Andes bonds, of Delaware County, New York, upon this one condition, that the bonds were properly and legally issued; therefore, know all men by these presents, that I hereby guarantee that the above-mentioned town of Andes bonds, of Delaware County, New York, were properly and legally issued, and no further.

"A. BENSON. [L. S.]

"Signed, sealed, and delivered in presence of
—— ——"

Slauson testifies that this writing was given as a part of the consideration of the transfer; that he does not remember whether Benson told him that he wanted to transfer the bonds to some one outside of the State of New York. (Folios 222–226.)

Copies of two of the notes will be found at folio 230.

Mr. Benson testifies at folio 232: "I think I told Mr. Slauson at the time the bonds were delivered that I wished to transfer these bonds to some person outside of the State of New York;" and in the same folio the following question was put: "Q. Was the object that you had in view in transferring these bonds to Mr. Slauson ever to have an action brought upon them in the United States Court?"

His answer was: "My object was to get them out of the way of the State of New York courts; that the bonds had been enjoined and the injunction had been dissolved, and I wanted to get them out of the State of New York—that is, part of the bonds had been enjoined."

Of the fourteen thousand six hundred dollars of bonds delivered to Slauson April 6, 1882, and referred to in the writings between Slauson and Benson of that date, ten thou-

sand five hundred dollars belonged to one Columbus Van Deusen, the husband of Harriet J. Van Deusen, who was a defendant in the equity action, and nine thousand five hundred dollars of which were held by her at the time the action was commenced. The numbers and denomination of these bonds are given in folios 173 and 174.

Upon each of these bonds there was this endorsement in the handwriting of Columbus Van Deusen: "This bond is owned by Columbus Van Deusen, and can only be transferred by my endorsement."

Upon bond No. 78, of one hundred dollars, there was no other endorsement. Upon one five hundred dollar bond, No. 19, and five one hundred dollar bonds, Nos. 60, 62, 63, 76, and 79, there was upon each the following endorsement: "For value received I hereby sell, assign, and set over to bearer all my right, title, and interest in the within bond. (Signed) Columbus Van Deusen."

Of the remaining nine thousand four hundred dollars of bonds there was upon each the further endorsement: "Harriet J. Van Deusen, executrix of Columbus Van Deusen, deceased, February 22, 1882," in the handwriting of the said Harriet J. Van Deusen, and each had attached thereto a certificate, of which the following is a copy:

"STATE OF NEW YORK, }
"*Ulster County, Surrogate's Office,* } *ss:*

"I, Alton B. Parker, surrogate of said County of Ulster, do hereby certify that on the 18th day of January, 1881, at the city of Kingston, in said county, letters testamentary upon the last will and testament of Columbus Van Deusen, late of the city of Kingston, in said county, deceased, were delivered, granted, and issued by the surrogate of said county to Harriet J. Van Deusen, of the city of Kingston, Ulster County, N. Y., and that the same are still valid and in full force.

"In testimony whereof I have hereto set my hand and

affixed the seal of the Surrogate Court of said county, this 28th day of February, 1882.

[L. S.] "ALTON B. PARKER,
"*Surrogate.*"

Four of these bonds of five hundred dollars each, namely, Nos. 43, 44, 45, and 46, had no seals thereon to the signatures of the commissioners, nor did No. 42 of five hundred dollars, included in the fourteen thousand six hundred dollars delivered to Benson, April 6, 1882. (Folio, 175.)

The whole issue of these bonds, amounting to ninety-eight thousand dollars, was presented to the county clerk of Delaware County on November 30, 1871, who made what is called a certificate of registry, which will be found at folios 152 and 153, and recorded at page six, in Liber one, of Miscellaneous Records, and wrote upon each bond the following :

"Registered in the County Clerk's Office of the County of Delaware.

"In witness whereof the county clerk has hereunto set his hand and seal.

"[DELAWARE COUNTY SEAL.] SMITH H. WHITE,
"*Clerk.*"

But previously to that time, and on November 16, nine thousand dollars of the bonds, to wit, eight five thousand dollar bonds, numbered from one to eight inclusive, and five one thousand dollar bonds, numbered from one to five inclusive, had been issued and delivered by the Commissioners to the Treasurer of the Railroad Company. (Folio, 148.)

SPECIFICATION OF ERRORS.

The following errors are asserted and intended to be urged by the plaintiff in error :

First. Upon the proofs submitted the case was brought within the provisions of section 5 of c. 137 of the laws of 1875, the plaintiff having been improperly and collusively made plaintiff for the purpose of creating a case cognizable under the first section of that act, and the Circuit Court erred in not so holding, and in entertaining jurisdiction of the action and rendering judgment for the defendant.

Second. The Circuit Court erred in not submitting to the jury the question whether the plaintiff below was a *bona fide* holder of the bonds and coupons in question.

Third. The Circuit Court erred in not submitting to the jury the question whether the plaintiff below was the owner of the bonds and coupons in question or the real party plaintiff in interest in bringing and prosecuting the action.

Fourth. The Circuit Court erred in holding that a recovery could be had upon the bonds or coupons formerly held by Columbus Van Deusen, amounting in all to $10,500, for the reason that he had, by his own act, destroyed their character as commercial paper and rendered them non-negotiable under the laws of the State of New York, and the title of these bonds and coupons had, therefore, not been transferred to defendant, and if transferred the defendant took as assignee, and the case was brought within the prohibition of section 1 of the judiciary act of 1875.

Fifth. The Circuit Court erred in holding that the bonds and coupons in question were the valid obligations of the town of Andes, and that the action brought by the defendant could be maintained.

Brief of Points and Authorities.

1. The plaintiff was improperly and collusively made plaintiff in these actions for the purpose of creating a case

cognizable under the first section of chapter 137 of the laws of 1875, and these cases should have been both dismissed under the provisions of section five of that chapter.

18 Stats., 470–2; Fountain *v.* Town of Angelica, 20 Blatch., 448; Barney *v.* Mayor, 1 Hughes, 118; Barney *v.* Baltimore City, 6 Wall., 280; Williams *v.* Nottawa, 104 U. S., 211; Bernard's Township *v.* Stebbins, 109 U. S., 355; New Providence *v.* Halsey, 117 U. S., 336; Cashman *v.* Armador, &c., Canal Company, 118 U. S., 58.

2. The plaintiff was not entitled to recover upon the bonds or coupons formerly held by Columbus Van Deusen, the bonds amounting in all to $10,500, the number of each bond being given in the above statement of facts. These bonds had been rendered non-negotiable by the act of Columbus Van Deusen, and the plaintiff could only take title thereto by assignment, and as assignee he could not maintain an action thereon under section 1 of chapter 137 of the laws of 1875.

Laws of New York, session of 1870, chapter 438; ditto, 1871, chapter 84; ditto, 1873, chapter 595; 3 Revised Statutes of New York, seventh edition, pp. 2247 and 2448; Coe *v.* Morgan, 8 Fed. Rep., 534; Farr *v.* Town of Lyons, 13 Fed. Rep., 377; same case, 19 Blatch., 522; Rich *v.* Town of Seneca Falls, 19 *Id.*, 558; Small *v.* King, 5 McLean, 147; Gregg *v.* Weaton, 7 Biss., 360.

3. All the bonds from which the coupons in suit were cut were void, for the reason that the County Judge of Delaware County never acquired jurisdiction to entertain the proceedings to bond the town of Andes, and had no authority to make an adjudication upon the subject, or appoint commissioners for that purpose. The petition which

was filed as the foundation of the proceedings was a conditional one, and such a petition under the laws of the State of New York is insufficient to confer jurisdiction upon the County Judge to act in the matter.

The People *v.* Adirondack R.R. Co., 57 Barb., 661; Craig *v.* Town of Andes, 93 N. Y., 405; Butternuts & Oxford Turnpike Co. *v.* North, 1 Hill, 518; Troy & Boston R.R. Co. *v.* Tibbitts, 18 Barb., 298; Fort Edward and Fort Miller Plank-Road Co. *v.* Payne, 15 N. Y., 583; McClintock *v.* Criswell, 67 Penn. St., 183; Boteler *v.* Espen, 99 *id.*, 313.

4. The petition was insufficient to confer jurisdiction upon the County Judge, because it did not allege that the Railroad Company, in aid of which the bonds were to be issued, was a domestic corporation.

Laws of New York, 1869, chapter 907, § 1, p. 2303; People *v.* Spencer, 55 N. Y., 1.

5. The County Judge did not acquire jurisdiction to hear and determine the matter, for the reason that the order and notice of hearing did not specify any place at which the hearing would be had.

§ 2, Chapter 907, Laws of 1869, *supra*.

6. As to the sufficiency of the petition, and the facts which must be stated therein in order to invest the County Judge with jurisdiction of the proceeding, the laws of New York upon the subject, and the decisions of the courts of that State containing such laws, will be adopted and followed by this Court.

Shelley *v.* Gray, 11 Wheat., 367; Supervisors *v.* U. S., 18 Wall., 71; Richmond *v.* Smith, 15 Wall., 429; Bailey *v.* Maguire, 22 Wall., 230; Buchen *v.* Cheshire R.R. Co., 125 U. S., 555; Township of Elmwood *v.*

Marcy, 92 U. S., 289; Township of East Oakland *v.* Skinner, 94 U. S., 257; Fairfield *v.* Gallatin Co., 100 U. S., 47; Post *v.* Supervisors, 105 U. S., 667.

7. Defendant is not a *bona fide* holder of the bonds and coupons in suit. He is chargeable with notice of the insufficiency of the petition and of the want of jurisdiction of the County Judge.

Town of South Ottawa *v.* Perkins, 94 U. S., 262; 13 Wall., 297; 16 *id.*, 452 and 644; 92 U. S., 484; McClure *v.* Township of Oxford, 94 U. S., 432; Ogden *v.* County of Daviess, 102 U. S., 634; Anthony *v.* County of Jasper, 101 U. S., 669; Hoff *v.* Jasper County, 110 U. S., 53; Stewart *v.* Lansing, 104 U. S., 505; Smith *v.* Sac County, 11 Wall., 139; Cowdrey *v.* Town of Canadea, 16 Fed. Rep., 532.

8. There are no recitals in the bonds which estop the plaintiff in error from alleging the want of jurisdiction of the County Judge to act in the matter.

County of Warren *v.* Marcy, 104 U. S., 97; Buchanan *v.* Litchfield, 102 U. S., 278; School District *v.* Stone, 106 U. S., 183; Carroll County *v.* Smith, 111 U. S., 556; Daviess County *v.* Dixon, 117 U. S., 657; Northern Bank *v.* Porter Township, 110 U. S., 608; Dixon County *v.* Field, 111 U. S., 83.

9. The payment of interest upon the bonds by means of forced tax levies upon the taxable property of the town does not estop plaintiff from now insisting upon their invalidity, the defect in their issue being such that all persons are chargeable with notice thereof.

Purdy *v.* Town of Lansing, October Term, 1888.
Cowdry *v.* Town of Canadea, 16 Fed. Rep., 532.
Thomas *v.* Town of Lansing, 14 Fed. Rep., 618.

10. The act of 1869 was unconstitutional. It did not receive the assent of two-thirds of the members of each branch of the Legislature. (Fol. 266.)

Constitution of New York, Article 1, Sec. 9.

ARGUMENT.

First.

It is contended on the part of the plaintiff in error that the Circuit Court had no jurisdiction of the case, and no lawful authority to order judgment for the plaintiff.

Its grant of jurisdiction in such cases is derived from the Federal Judiciary Act of 1875, and the fifth section of that act is mandatory that the suit shall be dismissed and judgment shall not be rendered for the plaintiff if he has been improperly or collusively made a plaintiff for the purpose of creating a case cognizable under the first section of the act. A brief review of the facts, it is believed, will place this question beyond the shadow of a doubt.

There are two alleged transfers, made at different times, but the material facts in each case are not different.

In No. 1 there was only a transfer of coupons, and in No. 2 there was a transfer of both bonds and coupons. In the latter case the transfer is claimed to have been made on the 6th day of April, 1882. Previously to that time the town of Andes had refused to pay the interest falling due thereon, and an action had been brought by tax-payers of the town to restrain the levy and collection of taxes for the purpose of paying the coupons falling due during the year 1882; all the bondholders, with a single exception, from whom the plaintiff claims to have derived title to his bonds, were made defendants to that action; and the principal object of the action was to ob-

tain a decree declaring the invalidity of the bonds, and perpetually restraining and enjoining their collection and payment out of the taxable property of the town; a preliminary injunction had been obtained and served and a motion made to dissolve it, and an order was entered upon that motion April 6, 1882, dissolving the injunction.

It is claimed that on the very day that that order was entered in the Delaware County clerk's office, one Anthony Benson, the Treasurer of the Rondout Savings Bank, a defendant bondholder in the equity action, and who was also acting as the agent of other defendant bondholders, hastened to New York, and there transferred these bonds to the amount of $14,600, and accrued interest, to the plaintiff Slauson, who was a retail confectioner doing business in New York city, and claiming to have a residence across the river at Jersey City, in the State of New Jersey.

Not a dollar was paid as a consideration of this transfer, but Slauson gave his note for the whole amount, payable at six per cent., at Jersey City, New Jersey, and nothing has ever been paid upon this note nor has payment of it been demanded.

Contemporaneous with this transfer, and as a part of the transaction, a writing was executed by Benson to Slauson, in which it is stated that the sale is made upon the one condition that the bonds were properly and legally issued, and guaranteeing that they were properly and legally issued. Benson either told him at the time, or subsequently, that the bonds were in litigation in the State courts, and Slauson will not say that Benson did not tell him that he wanted to transfer the bonds to some one outside of the State of New York.

Slauson testified that this writing was given as a part of the consideration of the transfer, and he does not remember whether Benson told him that he wanted to transfer

the bonds to some one outside of the State of New York.

Mr. Benson testifies, at folio 232, "I think I told Mr. Slauson at the time the bonds were delivered that I wished to transfer these bonds to some person outside of the State of New York," and that the object that he had in view in transferring the bonds to Slauson was to get them out of the way of the New York State courts; that the bonds had been enjoined, and the injunction had been dissolved, and he wanted to get them out of the State of New York.

It is true, he prevaricates as to the time when he informed Slauson of his object in making the transfer of the bonds. At first he says he thinks it was when the bonds were delivered; then he says it might have been some time afterwards.

With reference to the coupons described in No. 1, the collusiveness of the transfer is still more apparent. This transfer was not made until November 13, 1883, which was subsequent to the decision of the Court of Appeals of the State of New York in the case of Craig *v.* The Town of Andes (93 N. Y., 405), which held that the bonds were absolutely void, and that no action could be maintained upon them for their recovery in the State courts.

These coupons were all cut from the $25,800 of bonds held by the Hudson City Savings Institution, which was a defendant bondholder in the equity action.

Immediately upon the dissolution of the preliminary injunction on April 6, 1882, the Savings Bank made a transfer of the bonds to Albert Hoysradt, an irresponsible party, and the son of J. W. Hoysradt, who was a trustee of the Savings Institution. No money was paid by Hoysradt upon this transfer, but he gave his note for the full amount of the bonds, which was guaranteed by his father, the trustee of the Savings Institution, and at the same time the

Savings Institution gave young Hoysradt a bond to indemnify him against loss on account of the bonds, reciting the transfer, and guaranteeing the payment in full of the face value of the bonds and of the coupons past due, or thereafter to fall due, and of each and every of the bonds and coupons according to their terms and conditions and at the time set forth therein, and to indemnify and keep him harmless against any necessary expense or costs to which he might be put in enforcing or attempting to enforce the payment and collection of the bonds and coupons, or any or every of them. Payment of the note given by young Hoysradt has never been made or even demanded.

Young Hoysradt afterwards delivered the coupons cut from these bonds to one Thomas Cornell, the President of the Rondout Savings Bank, of which Benson was Treasurer, without receiving anything therefor, and Cornell handed them to Benson to be disposed of, and he paid neither Cornell nor Hoysradt anything for them, but delivered them to Slauson November 13, 1883. Slauson paid no money for the coupons, but gave his note payable at Jersey City on demand, no part of which has been paid, and at the time of the transfer Benson testifies that he informed Slauson that the legality of the bonds from which the coupons had been detached was in litigation, in this way: that he told him that he presumed that the coupons were from some bonds that had been enjoined; that he told Slauson that he presumed they stood in the same condition as the other bonds that he had sold him on the 6th of April, 1882; that they had talked about it that an action was pending in the courts about these bonds; that they had been enjoined; that the injunction had been dissolved, and that an appeal was then pending from the order dissolving it. And he also says: "I told plaintiff (Slauson) I wanted to transfer these coupons to some person resid-

ing outside of the State of New York. I told him that by so doing an action could be brought upon them in the United States courts."

The same attorneys who appeared for the defendant bondholders in the equity action in the State courts also bring this action as attorneys for Slauson, although Slauson resides some two hundred miles from where the attorneys have their place of business.

If these are not cases where the conclusion is irresistible that the plaintiff has been invested with an apparent title to these bonds and coupons for the purpose of giving the Circuit Court jurisdiction of the action, it is difficult to conceive of a case where such a conclusion could be reached.

It is not necessary to hold that the plaintiff has not acquired a good legal title to the bonds and coupons. All that may be conceded. The statute does not require such a holding in order to deprive the court of jurisdiction. It need only be made to appear that the object of the transfer was to create a case cognizable by the Circuit Court under the Federal judiciary act.

In Barney *v.* Mayor (1 Hughes, 118) it was held that a conveyance made merely for the purpose of vesting the property in a person who by residence may sue in the United States courts, when the original owners could not, will not give jurisdiction.

Same case, 6 Wall., 280.

In Williams *v.* Nottawa (104 U. S., 209) it was held that, under the fifth section of the act of March 3, 1875, c. 137 (18 Stats., 470), it is the duty of the Circuit Court to dismiss a suit when it appears that the parties thereto have been improperly or collusively made or joined for the purpose of creating a case cognizable under that act. At page 211 the Chief-Justice says:

"In extending a long way the jurisdiction of the courts of the United States, Congress was specially careful to guard against the consequences of collusive transfers to make parties, and imposed the duty on the Court, on its own motion, without waiting for the parties, to stop all further proceedings and dismiss the suit the moment anything of the kind appeared. This was for the protection of the Court as well as parties against frauds upon its jurisdiction; for, as was very properly said by Mr. Justice Miller, speaking for the Court, in Barney *v.* Baltimore (6 Wall., 280), such transfers for such purposes are frauds upon the Court, and nothing more."

At page 212:

"Inasmuch, therefore, as it was the duty of the Circuit Court, on its own motion, as soon as the evidence was in, and the collusive character of the case shown, to stop all further proceedings and dismiss the suit, the judgment is reversed, and the cause remanded with instructions to dismiss the suit at the costs of the plaintiff in error, because it did not really and substantially involve a dispute or controversy within the jurisdiction of that court, leaving the parties in interest to such remedies as they may be entitled to for the recovery of any amount that may be due them, respectively, on the bonds they severally own. In this connection we deem it proper to say that this provision of the act of 1875 is a salutary one, and that it is the duty of the Circuit Courts to exercise their power under it in proper cases."

In Bernards Township *v.* Stebbins (109 U. S., at page 355), Mr. Justice Gray says that—

"The decision in Williams *v.* Nottawa establishes that the Circuit Court of the United States cannot, since the act of 1875, entertain a suit upon municipal bonds payable to bearer, the real owners of which have transferred them to the plaintiffs of record for the sole purpose of suing thereon in the courts of the United States for the

benefit of such owners, who could not have sued there in their own names, either by reason of their being citizens of the same State as the defendant, or by reason of the insufficient value of their claims."

In New Providence *v.* Halsey (117 U. S., 336) the Court, per Chief-Justice, holds that in an action at law in a circuit court of the United States against a township to recover on bonds issued by the township, the plaintiff is not entitled to recover on bonds transferred to him by citizens of the State in which the town is situated for the mere purpose of being sued in a court of the United States.

In Cashman *v.* Armador, &c., Canal Company (118 U. S., 58), it was held by the Chief-Justice that, on the facts stated, in the opinion of the Court the assignment of the cause of action to the plaintiff in error was collusively made for the purpose of creating a case cognizable by the Circuit Court of the United States, and that the controversy is really and substantially between one of the counties of California and citizens of California, and is not properly within the jurisdiction of the Circuit Court.

In Fountain *v.* Town of Angelica (20 Blatch., 448) the question arose in the form in which it is here presented.

It was an action upon coupons cut from town bonds. They were purchased by the plaintiff at the solicitation of the director of a bank which owned them, without any inquiry as to their validity or value, and without any negotiation concerning the price to be paid. The plaintiff paid for them by a check which was made for the full face amount of the dishonored and contested coupons, but which check was never in fact paid by him or even presented for payment, and he was informed that the coupons would have to be collected by suit, and he placed them in the hands of the attorney of the bank for collection. Wallace, J., in dismissing the action, discusses the

scope and purpose of section 5 of the act of March 3, 1875, and at page 449 says:

"It is not difficult to discern the purpose of the section. It had long been notorious that the jurisdiction of the Circuit Courts was constantly invoked for the benefit of parties n t within the class which the constitutional grant of jurisdiction to the Federal Courts was intended to include by parties who, because they were citizens of the same State as their adversary, could only resort to the courts of the State, but who, for some ulterior motive, desired to resort to the Federal Courts. A convenient device was resorted to of transferring the subject of the controversy to a citizen of another State, a friendly coadjutor, who, while acquiring the legal title, was expected to litigate for the benefit of the original party. Thus new parties were introduced into controversies in which they had no substantial interest, merely to bring cases within the Federal jurisdiction. It cannot be doubted that the provision in question was intended to be made to prohibit a jurisdiction sought and obtained by such collusive methods. It should be held that a plaintiff who has been introduced into a controversy by assignment or transfer, merely that he may acquire a standing and relation to the controversy which will enable him to prosecute it for the beneficial interests of the original party, has been improperly and collusively made a party for the purpose of creating a case cognizable under the act. No better illustration of the class of cases which the section was intended to meet could be presented than the present case affords. It is palpable, upon the evidence, that the plaintiff has no substantial interest in the coupons which are sued upon, conceded that he acquired the legal title to them so as to enable him to maintain the action."

* * * * * *

"In short, he was merely an instrument of Dick, selected by Dick, and invested with a formal title to the coupons, in order that Dick might litigate them in a Federal Court. It is the duty of the Court to dismiss the suit."

In the present case it is very manifest that the plaintiff has prosecuted this action for the benefit of the bondholders from whom he received his bonds and coupons, and all of whom are defendants in the equity action, for the writing given by the bondholders at the time of the transfer recites that the sale is made on the condition that the bonds were legally issued, that is, if not legally issued then there is no sale, and hence it cannot be determined whether there has been a sale unless the Court first determines whether the bonds were legally issued, and it is therefore very clear that the action is prosecuted for the benefit of the bondholders. Again, unless the plaintiff succeeds in this action the bondholders cannot collect the notes given by plaintiff upon the transfers, because they have guaranteed that the bonds were legally issued, but the highest court in the State of New York has already decided that the bonds were not legally issued, and unless they can secure a decision from this Court sustaining the legality of their issue the notes are not collectible.

In any view that may be taken of the relations of the parties to these cases, it must be apparent that the plaintiff was made a party solely for the purpose of creating a case cognizable by the Circuit Court, and it is submitted that so transparent a fraud upon the jurisdiction of the Court should not be tolerated.

SECOND.

As to the $10,500 of bonds to which plaintiff claims title, and upon the coupons cut from which he has been permitted to recover, and which were formerly the property of Columbus Van Deusen, the plaintiff's title, if he has any, is that of assignee, and he cannot therefore recover upon these coupons.

The Circuit Court had no jurisdiction under section 1 of the act of March 3, 1875, which prohibits a recovery by an assignee unless the assignor could have maintained an action for the same cause in the Federal Courts.

The numbers of these bonds and the endorsements thereon are given at folios 173 and 174 of the printed case. Columbus Van Deusen, when the owner of the bonds, wrote upon some of them, amounting to $9,400, with his own hand, the following endorsement: "This bond is owned by Columbus Van Deusen and can only be transferred by my endorsement." Upon others, amounting to $1,000, the following endorsement: "This bond is owned by Columbus Van Deusen and can only be transferred by my endorsement," signing his name thereto.

The latter had the further endorsement thereon: "For value received I hereby sell, assign, and set over to bearer all my right, title, and interest in the within bond. (Signed) Columbus Van Deusen."

The former had beneath the endorsement made by Columbus Van Deusen the following: "Harriet J. Van Deusen, executrix of Columbus Van Deusen, deceased. February 22, 1882," in the handwriting of Harriet J. Van Deusen, and also had attached thereto a certificate from the surrogate of Ulster County, under his seal, dated February 28, 1882, certifying that on January 18, 1881, letters testamentary upon the will of Columbus Van Deusen, deceased, were granted by him to Harriet J. Van Deusen, and that the same were still in force. It has been repeatedly held by this Court that municipal bonds of this character are not negotiable promissory notes or bills of exchange negotiable by the law merchant, as this term is used in the first section of the act of March 3, 1875, and hence they are not embraced within the exception in that section of such promissory notes and bills of exchange from the

prohibition that the Circuit Court shall not have jurisdiction over a cause of action in favor of an assignee where the assignor could not maintain such action.

But it has also been held that where a municipal bond of this character, and the coupons attached thereto, are payable to bearer, that the holder does not make title thereto by assignment, and hence is not to be regarded as the assignee thereof.

The holder is the bearer, and hence is the person to whom the obligation is made payable, and, if a citizen of another State, he may maintain an action thereon, not as the holder of a promissory note negotiable by the law merchant, nor as the holder by assignment of a contract obligation, but as a holder through a transfer by delivery, and so far as his right to maintain the action is concerned, he then occupies the same position as if he was the first and original holder thereof.

This is regarded as logically following from the fact that the instrument is made payable to bearer, but if, while in the hands of a holder who is a resident of the State of New York, the bond is by the act of that holder made non-transferable by delivery, in other words, if it ceases to be payable to bearer and becomes payable only to the individual holder, then any person who subsequently acquires title through him can only acquire it as assignee. It is no longer transferable by simple delivery.

But it may be said that the holder cannot, by any act of his, lawfully change the terms of the instrument. Granted, for the sake of the argument, and then it follows that the writing by Columbus Van Deusen upon the instrument, that it was his property, and could only be transferred by his endorsement, would be an attempt to engraft a material alteration upon the instrument, and it would not be collectible in his hands or in the hands of any person who derived title from him.

But this act of Van Deusen was not unauthorized. The act of 1869 under which these bonds were issued, if at all, (chap. 907, Laws of 1869, p. 2303), in section 4 provides that the bonds when issued shall have interest warrants attached to them, and that "the commissioners may agree with any holder to register any such bonds, in which case the interest warrants on the registered bonds shall be surrendered, and the interest shall be payable only on the production of the registered bond, which shall then be transferable only on the commissioners' records."

This registering of the bonds is an entirely different matter from the registering or registry thereof in the county clerk's office specified in section 8 of the act.

April 27, 1870, an act was passed by the Legislature of New York (chap. 438, Laws of 1870, p. 988), which provides:

"It shall be lawful for the owners or holders of any bond issued by any village, town, county, or city of this State, pursuant to law, and made payable to the bearer thereof, to render such bonds non-negotiable, except by the owner's endorsement, by endorsing upon the same, and subscribing a statement, that said bond is the property of such owner, and thereupon the principal sum of money mentioned in said bonds shall only be payable to said owner, or his legal representatives or assigns."

May 22, 1873, a further act upon the subject was passed (Chap. 595, Laws of New York, 1873, p. 910), as follows:

"SECTION 1. The owner or holder of any corporate or municipal bond or obligation, except such as are designed to circulate as currency, payable to bearer, heretofore issued, or which may hereafter be issued, and payable in this State, but not registered in pursuance of any law thereof, may make the same non-negotiable, except as provided in the second section of this act, by subscribing his name to

a statement endorsed thereon that such bond or obligation is his property, and thereupon the principal sum therein mentioned shall be payable only to such owner or holder, or his legal representatives or assignees.

"SECTION 2. The bonds and obligations mentioned in the last section, after having been endorsed as therein provided, may be transferred by an endorsement in blank or payable to order, with the addition of the assignor's place of residence.

"SECTION 3. The provisions of this act shall apply to all interest coupons accompanying any corporate or municipal bond or obligation payable in this State."

When Columbus Van Deusen wrote upon these bonds, with his own hand, "this bond is the property of Columbus Van Deusen," that was a substantial compliance with the provisions of the acts of 1870 and 1873, for it was the placing of his own signature to a statement that the bond was his property. The added paragraph, "and can only be transferred by my endorsement," was simply a statement of a conclusion of law which followed as the effect of his act under the provisions of these statutes, and was mere surplusage.

There can be no doubt that it was his intention to comply with the requirements of the statute, and to make the instrument non-negotiable and transferable only by his endorsement.

In Gregg *v.* Weston (7 Bissell, 360) it was held that the statutes of Indiana make all promissory notes negotiable so far as to vest the property in each endorsee successively; but unless a note is made payable to order or bearer at a particular bank, whatever equity the maker was entitled to against the payee he may assert against any endorsee. Under such a statute the United States courts have no jurisdiction of an action by an assignee of a note not made payable at a bank, as such note is not a promissory note negotiable by the law merchant.

The statutes of a State enter into and become a part of the note made in that State.

In Coe *v.* Cayuga Lake Railroad Company (19 Blatch., 522) it was held that a promissory note made by a corporation and sealed with its corporate seal, payable to the order of a payee, and endorsed by him, is not a promissory note negotiable by the law merchant within section 1 of the act of March 3, 1875 (18 Stats., 470), and therefore an assignee of it cannot sue the payee on it, in a circuit court of the United States, unless his assignor could have sued the payee on it in such court. In this case the note was signed by the railroad company by its president, and sealed with the seal of the corporation, and made payable to the order of its president at New York city five months from date. It was endorsed by the president, delivered to one Stillman, who discounted it, and who was also a citizen of the State of New York, and Stillman afterwards transferred it by delivery to the plaintiff, a citizen of the State of Connecticut, who brought the action, and it was held that the instrument was not a promissory note negotiable by the law merchant.

And in speaking of municipal bonds, at page 528, Blatchford, Justice, says:

"The obligations of municipalities payable to bearer have been placed by numerous decisions of the Supreme Court of the United States in the category of negotiable instruments, transferable by delivery so far as to authorize the holder to demand payment of them, and to maintain in his own name an action upon them, but they do not thereby necessarily become negotiable instruments in the sense of the law merchant. (Citing Wall *v.* County of Monroe, 103 U. S., 74, 79.) And even where they have such a status that, passing into the hands of a *bona fide* purchaser for value before maturity, they do so freed from any infirmity in their origin (Cromwell *v.* County of Sac,

96 U. S., 51, 57), they are not promissory notes negotiable by the law merchant in the sense of the statute under consideration. Such obligations payable to bearer are deemed payable to the holder, and so, under this act of 1875, the holder who sues is not regarded as an assignee of the contract, but is a holder through a transfer by delivery."

The endorsement of Harriet J. Van Deusen, executrix of Columbus Van Deusen, deceased, February 22, 1882, was not even sufficient under the second section of the act of 1873 to transfer the title, for that section provides that bonds which have been rendered non-negotiable under the first section may be transferred by an endorsement in blank, or payable to bearer or to order, with the addition of the assignor's place of residence. The assignor's place of residence is not given, but in any view of the effect of the endorsement the instrument has ceased to be one payable to bearer, and not being a promissory note negotiable by the law merchant, subsequent holders are to be regarded as assignees, and prohibited from maintaining an action under section one of the act of 1875.

THIRD.

The bonds in suit were void in the hands of the defendant in error because the County Judge never acquired jurisdiction of the proceedings to bond the town of Andes or to appoint commissioners for that purpose, and they therefore had no authority to bind the town by an issue of bonds.

The petition upon which the proceedings were based was conditional; the names of sixty-four tax-payers having been signed upon condition that the road should be located by a specified route through the town; the plaintiff in error offered in evidence the assessment roll of the

town, which would have shown to what extent these taxpayers represented the taxable property of the town which was excluded, and to which ruling an exception was taken.

The Court of Appeals of the State of New York in the case of Craig *v.* The Town of Andes (93 N. Y., 405, decided October 9, 1883) has held that the petition or consent in this case is absolutely void, and conferred no jurisdiction upon the County Judge under the laws of the State of New York as interpreted and construed by the courts of that State in a long line of decisions.

The same construction was given to the act of 1869 in the case of The People *ex rel.* Averill *v.* Adirondack Co. (57 Barb., 656, decided in November, 1870), where it was held by the General Term of the Supreme Court that the proceeding before the County Judge was void, because "it was based upon a petition that was conditional and not absolute," requiring the money raised to be used in a particular county.

The same doctrine was enunciated by the Supreme Court of the State as early as July, 1841, in Butternuts & Oxford Turnpike Co. *v.* North (1 Hill, 518), and again in September, 1854, in Troy & Boston R.R. Co. *v.* Tibbitts (18 Barb., 298), and also by the Court of Appeals as early as June, 1857, in Fort Edward, &c., Plank Road Co. *v.* Payne (15 N. Y., 583).

In referring to these authorities, the Court of Appeals in Craig *v.* Town of Andes, at page 415, say:

"These cases apply here. The petition is not absolute. The order is based upon it, and the statute, by compliance with which alone the town can be bound, has not been followed. This defect was apparent upon the face of the petition, and it follows both that the County Judge had no jurisdiction to entertain the proceedings—consequently

none to make a record or judgment—and that the plaintiff is affected with notice thereof."

This construction of the act of 1869 by the highest court of the State, following a long line of decisions to the same effect by the State courts, must be deemed to have entered into and formed a part of the statute in question to the same extent as if it had been so expressly enacted therein, and should be adopted and followed by this Court in construing and applying the same statute.

In Shelley *v.* Gray (11 Wheat., 367), this Court, referring to the decisions of State courts giving construction to State laws, say:

"Nor is it questionable that a fixed and received construction of their respective statute laws in their own courts makes in fact a part of the statute law of the country, however we may doubt the propriety of that construction."

In Supervisors *v.* U. S. (18 Wall., 71) the question related to the power of a county to issue warrants as evidence of indebtedness under an Iowa statute, and the Court held, at page 81, that the Supreme Court of Iowa having decided that under the statute in question the power did not exist, the Federal courts would follow the decision of the State courts. Referring to the decision of the State courts they say:

"This was decided in 1863 before any of the warrants were issued upon which the relator's judgment was founded, and the construction then given to the statute has been repeatedly asserted and consistently maintained. It is, therefore, and it has always been the settled law of the State. That the construction of the statutes of a State by its highest courts is to be regarded as determining their meaning, and generally as binding upon the U. S. courts,

cannot be questioned. It has been asserted by us too often to admit of further debate. We have even held that when the construction of a State law has been settled by a series of decisions of the highest State courts differently from that given to the statute by an earlier decision of this Court, the construction given by the State courts will be adopted by us, and we adopt the construction of a State statute settled in the courts of the State, *though it may not accord with our opinion.* There is every reason for this in the construction of statutes defining the duties of State officers. It is true that when we have been called upon to consider contracts resting upon State statutes, contracts valid at the time that they were made according to the decisions of the highest courts of the State, contracts entered into on the faith of those decisions, we have declined to follow later State court decisions declaring their invalidity. But in other cases we have held ourselves bound to accept the construction given by the courts of the States to their own statutes."

In Richmond *v.* Smith (15 Wall., 429), this Court followed the decisions of the Supreme Court of Virginia as to the powers of the municipal authorities of a city to bind the municipality, saying, at page 438:

"State courts certainly have a right to expound the statutes of the State, and, having done so, those statutes, with the interpretation given to them by the highest court in the State, become the rules of decisions in the Federal Courts."

In the case at bar the question is clearly one of construction of a State law, namely, what is a sufficient petition under the act of 1869 to confer jurisdiction upon the County Judge? and it was decided in 1870, and before the proceedings to bond the town of Andes were instituted, that a conditional petition was unauthorized by the statute. This decision was in harmony with at least three previous

decisions of the Supreme Court and Court of Appeals in analogous cases, and was subsequently affirmed by the decision of the Court of Appeals in the case involving the sufficiency of the petition in respect to the very issue of bonds in question.

In Bailey *v.* Magwire (22 Wallace, pp. 230 and 231) the Court say:

"The whole subject we have discussed recently came before the Supreme Court of Missouri in the case of The Pacific Railroad Company *v.* Cass County. The assessor of Cass County had levied taxes for both State and county purposes on the property of the Company in the county, and the question was whether these levies were authorized. The court held that the taxes for county purposes were rightfully assessed under the general revenue law, but that the taxes for State purposes were unauthorized, because section 12 of the act of 1852 had not been repealed either by an express provision of a subsequent law or by necessary implication, and, being in force, State taxes could only be collected in the way pointed out in that section. As it is the peculiar province of the highest court of a State to decide whether or not the method pursued in the assessment and collection of taxes is in conformity with the law of the State, this decision is controlling."

The decisions of the New York courts declaring the invalidity of a conditional petition or consent are put upon two grounds.

First. That such a petition or consent is unauthorized by the act of 1869, under which the proceedings in this case were instituted. It is a special statutory proceeding, not before a court, but before an inferior judicial officer; it is in derogation of the common law rights of the citizen that his property shall not be taken or incumbered for the benefit of a private corporation without his consent, and hence the authority of the statute must be strictly followed, and nothing can be taken by inference or implication.

Second. The condition was violative of the provisions of the general railroad act of the State, which requires that the directors of the company shall locate the route of the road. They are the trustees of a public trust in this respect, and are to locate the road where, in their judgment, it will best subserve the interests and convenience of the public and the objects for which the franchise was granted to the company.

Chapter 140 the Laws of 1850. The first section declares that the company is formed "for the purpose of constructing, maintaining, and operating a railroad for public use in the conveyance of personal property." Section five declares that the affairs of the company shall be managed by a board of thirteen directors, and section twenty-four provides in substance that the board of directors shall locate the route of the road.

The courts of New York have uniformly held since 1841 that, in the absence of a statute authorizing it, any condition in a subscription or consent in aid of the construction of a road for public use, where the duty was imposed upon the directors of the company of selecting the route of the road, which sought to control their action, or which did not leave them free to use their own judgment in the matter, renders the subscription or consent void on the ground that it is contrary to public policy and subversive of the plain intent of the statute in granting the franchise. The reasons therefor are very cogently stated in the cases above cited.

We have also what is equivalent to a legislative declaration upon the subject made by the Legislature of New York before these bonds were issued, to the effect that the act of 1869 did not authorize the presentation to the County Judge of a conditional petition.

The first section of the act of 1869 was amended on

May 12, 1871, by chapter 925, page 2115, of the laws of that year, and in the section as thus amended there was inserted for the first time this provision:

"The petition authorized by this section may be absolute or conditional; and if the same be conditional the acceptance of a subscription founded on such petition shall bind the railroad company accepting the same to the observance of the condition or conditions specified in such petition: *Provided, however*, That non-compliance with any condition inserted in such petition shall not in any manner invalidate the bonds created and issued in pursuance of such petition."

According to a well-settled rule of statutory construction this amendment must be regarded as a plain expression of the opinion of the Legislature that under the act of 1869 a conditional petition was unauthorized and would be insufficient to confer jurisdiction upon the County Judge. (Hardcastle on Statutes, 67.)

Even under the act of 1871 the petition was unauthorized. That act merely provided that the petition might be "absolute or conditional;" but this petition was in part absolute and in part conditional. It was the plainest kind of a fraud upon the people of the town. In those sections of the town where the tax-payers would not sign unless they could be assured that the road would be located in their neighborhood the conditions were inserted; while in other portions of the town where the tax-payers relied upon such a location of the road by the company as in the judgment of the directors would best suit the public convenience, and where the tax-payers would not sign the petition if it contained any such conditions, they were carefully omitted and suppressed.

And if it was sought to uphold the proceeding under the act of 1871, greater difficulties would be encountered.

For that act required that the petition should state that the petitioners were a majority of the tax-payers of the town, "not including those taxed for dogs or highway tax only," which was not required by the act of 1869.

The petition does not contain any such averment, and hence would be fatally defective under the act of 1871. It has been repeatedly so held both by the State and Federal Courts.

People *v.* Smith, 55 N. Y., 135; Town of Wellsborough *v.* N. Y. & C. R.R., 76 N. Y., 82; Cowdrey *v.* Town of Canadea, 16 Fed. Rep., 532.

But the Court of Appeals have held that the proceeding must stand or fall under the provisions of the act of 1869; and that the act of 1871 cannot be invoked either for the purpose of sustaining or impeaching the proceeding, except so far as by the changes therein made it is to be regarded as a legislative construction of the want of authority to present a conditional petition under the act of 1869. The petition is dated Nov. 23, 1870; it was presented to and filed with the County Judge May 6, 1871; the order for and notice of a hearing was made on that day and the notice published on May 10, returnable on May 22, and the amendatory act became a law May 12.

It seems to be well settled by the decisions of the New York courts, that under such circumstances the sufficiency of the petition and of all the proceedings down to the time of the passage of the amendatory act must be determined by the provisions of the act of 1869, and by the law which was in force when the petition was filed and the proceedings thereunder had.

Ely *v.* Holton, 15 N. Y., 595; Syracuse Savings Bank *v.* Town of Seneca Falls, 86 N. Y., 317; People, &c., *v.* Board of Supervisors, 43 N. Y., 130.

It should be borne in mind that the point we are now considering is simply one of jurisdiction of the County Judge under the laws of the State of New York, and upon that question the decisions of the State courts construing those laws, it is submitted, will be accepted as controlling here.

It is believed that no decision of this Court can be found announcing a contrary doctrine. There are repeated decisions of this Court holding that as to the questions of commercial law involved in these town-bonding cases, such as the rights of an innocent holder, and as to what constitutes a holder in good faith, and how far he is protected by the recitals of the bond, and so forth, this Court is not required to follow the decisions of the State courts, but may adopt its own views upon the subject; but these decisions are put upon the ground that such questions do not involve the construction of State statutes, but principles of commercial law and usage which the Federal Courts have always considered without reference to the disposition made of them by State tribunals. But the question as to the right of the defendant in error as an alleged *bona fide* holder of commercial paper will be discussed later on. The sole point for which we are now contending is that under the act of 1869 the County Judge did not acquire jurisdiction of the proceeding to bond the plaintiff in error. Whether jurisdiction was acquired depended upon the presentation of a petition under that act sufficient in form and substance to confer jurisdiction. What is a sufficient petition under the act in question it is peculiarly the province of the State courts to determine. Under this act and under analogous statutes those courts have uniformly held that such a petition as that presented in this case was unauthorized, and insufficient to clothe the County Judge with even the

semblance of jurisdiction; and unless the precedents of a century are to be ignored these decisions of the State courts will be respected and followed. Munson *v.* Town of Lyons, 12 Blatch., 539, affirmed 99 U. S., 684, cited by the trial judge and relied upon by counsel, is not decisive of this point. In the first place, that case was decided at the Circuit in —— 1875, and in this Court ——, before the Court of Appeals had given construction to the act of 1869 in the case of Craig *v.* Town of Andes.

This Court has repeatedly held that where it has adopted a construction of a State law different from that subsequently given by the State courts, it will cause its decisions thereafter to conform to that of the State tribunals.

In the second place, the case of the Town of Lyons was not decided in this Court upon the ground of the sufficiency of the petition; but it appeared that each bond had upon it a recital that it was "issued under the authority contained in chapter 907 of the Laws of 1869 of that State, and the amendments thereto, and under and pursuant to a judgment and determination of the County Judge of Wayne County, dated May 17, 1872, duly rendered and entered of record, under and pursuant to a petition of the tax-payers of said town, praying that said town issue its bonds to the amount of $150,000, and invest the same in the capital stock of that company." And the Supreme Court, in affirming the judgment, makes the case to turn principally upon the point as stated at page 686, that "the recital in the bonds sets forth the judgment of the County Judge; that it was duly rendered; that the bonds were issued pursuant to the statutes referred to, for the object specified in the petition of the tax-payers, and by persons properly appointed and charged by law with the duty of subscribing for the stock and issuing the bonds to pay for it."

From the report of the same case at the Circuit, it would seem that the trial judge directed judgment for the plaintiff because the State court had not then decided (1875) that the petition was so defective that the County Judge had absolutely no jurisdiction to act at all in the matter, but as the previous decisions of the State courts upon the subject had been made in a direct proceeding to review the action of the County Judge, they might be regarded as holding that such action was erroneous, and should for that reason be reversed, but not necessarily holding that it was void, and the learned Judge very plainly intimates that, if the State courts had held that the County Judge was entirely without jurisdiction to act in the premises, he would have followed the decision of the State courts, and held the bonds to be void in the hands even of a *bona fide* holder. What he says upon this point, at page 542, may properly be quoted here:

"It is insisted, on behalf of the defendant, that the bonds in question are void, because the County Judge never acquired jurisdiction of the proceeding pursuant to which the commissioners were appointed, as the petition was not in conformity to the statute, in that it contained conditions which were unauthorized.

"Of these, one required the railroad to locate the terminus of its road at a place named, and the other provided for the application of a portion of the bonds to be created to the purchase of stock then held by individuals resident in the town. Decisions of the courts of the State of New York are cited, which hold that the petition in such proceeding must be an unconditional one, and that, if it contains conditions, the entire proceeding is void. The decision of the Court of Appeals in the case of The People *v.* Adirondac Company countenances this position. It is there said in the opinion: 'If the petition is in a form not warranted, or is subject to any condition not authorized by the statute, it is simply void, and the officer acquires no

jurisdiction under it.' It is not to be denied that this conclusion accords with the general doctrine, that all proceedings which, like the one under consideration, may impose a charge upon the property of the citizen without his consent must be strictly pursued; and it is also to be conceded that such conditions as were incorporated into the petition here are contrary to public policy, as they tend to subject measures which should be adopted solely from considerations of public welfare to the improper influences of personal or mercenary interests." (Citing Butternuts & Oxford Co. *v.* North, 1 Hill, 518; Fort Edward Co. *v.* Payne, 15 N. Y., 583.)

Again, on the same page, the Court says:

"If it is true that the County Judge never acquired jurisdiction because of the character of the petition, the bonds issued by the commissioners he appointed are invalid in the hands of innocent holders, because, in law, no commissioners were ever appointed, and no agents were ever empowered to represent the Town. The Supreme Court of the United States has sustained with steady hand the rights of innocent holders of municipal bonds which have been issued by agents in disregard of the limitations of their authority, but it has also recognized and enforced the distinction which exists between the want of power to act in behalf of the municipality and irregularities in the exercise of a power that has been conferred."

In Bucher *v.* Cheshire Railroad Company (125 U. S., 555) it was held that the courts of the United States adopt and follow the decisions of the highest court of a State in questions which concern merely the constitution or laws of that State; also where a course of those decisions, whether founded on statutes or not, have become rules of property within the State; also in regard to rules of evidence in actions at law; and also in reference to the common law of the State, and its laws and customs of a local

character when established by repeated decisions. At page 583 the court cities Leffingwell *v.* Warren (2 Black, 599), where the Supreme Court of the United States said in regard to the statutes of limitations of a State, "the construction given to a statute of a State by the highest tribunal of such State is regarded as a part of the statute, and is as binding upon the courts of the United States as the text." Also cites the case of Luther *v.* Borden (7 How., 140), where Chief-Justice Taney said: "The point then raised here has been already decided by the courts of Rhode Island. The question relates altogether to the constitution and laws of that State, and the well-settled rule in this Court is, that the courts of the United States adopt and follow the decisions of the State courts in questions which concern merely the constitution and laws of the State." (See also Post *v.* Supervisors, 105 U. S., 667.)

In Cowdrey *v.* Town of Canadea (16 Federal Reporter, 532) Wallace, Justice, holds that—

"Purchasers of municipal bonds, executed by agents, must ascertain at their peril that the delegated authority assumed has been conferred.

"The authority of a majority of the tax-payers of a town to incumber the property of a minority against their will, in aid of a railroad or other corporation, receives no countenance from the principles of the common law. Every step, therefore, required by the statute authorizing such aid must be in strict conformity therewith.

"As in this case the proceedings were instituted, conducted, and completed according to the provisions of the original act of 1869, c. 917, and in disregard of the essential modifications introduced by c. 925 of the amending act of 1871, the appointment by the County Judge of the commissioners who issued the bonds in suit was a nullity, and such bonds are void.

"The rule is also inflexible that when a court or judicial officer exercises a special statutory power outside the scope

of usual jurisdiction of courts of general powers the record of the proceedings must show that the statutory authority has been pursued, and in this regard the proceedings are on the same footing with those of courts of limited and inferior jurisdiction. Citing Thatcher *v.* Powell, 6 Wheat., 119; Betts *v.* Bagley, 12 Pick., 572; Denning *v.* Corwin, 11 Wend., 647; Dyckman *v.* New York, 5 N. Y., 434; Town of Huntington *v.* Town of Charlotte, 15 Vt., 46; Morse *v.* Presby, 25 N. H., 299."

This case was decided June 1, 1883.

Thompson *v.* Perrine (103 U. S., 806; and again, 106 U. S., 589) is sometimes cited as authority to the effect that this Court will not follow the decisions of State courts in town-bonding cases even where those decisions relate to the construction of the statutes of the State; but an examination of that case will show that this Court did not there depart, or intend to depart, from its long established rule in this respect. The validity of the bonds depended entirely upon the effect given to the validating act of the Legislature of the State of New York. At the time the bonds were issued there were at least three decisions of the Court of Appeals of the State holding that it was within the constitutional province of the Legislature to pass such acts, although the Court of Appeals subsequently held that the validating act in question was unconstitutional. This Court held that the prior decisions of the Court of Appeals to the effect that the Legislature had authority to pass such an act entered into and formed a part of the law as it stood at the time that the bonds were issued, and also that, where subsequent decisions of the Court of Appeals of the State were in conflict with prior decisions upon the same subject, this Court was at liberty to regard the construction of the law by the State Courts as unsettled, and to follow the prior rather than the subsequent decis-

ions upon the subject. It will thus be seen that the decision of this Court in this respect was in harmony, and not in conflict, with the general rule relating to the controlling authority of decisions of State courts to which the Federal Courts have so steadfastly adhered from their origin.

FOURTH.

The petition was insufficient to confer jurisdiction because of its omission to state that the Delhi and Middletown Railroad Company, in aid of which the bonds were to be issued was a corporation in the State of New York, or, in other words, was a domestic corporation.

The statute requires that this fact shall be explicitly averred.

Laws of 1869, Chapter 907, § 1, p. 2303; People *v.* Spencer, 55 N. Y., 1.

The allegation in the petition is that the Railroad Company is an "association formed in said county and State."

This is not equivalent to an averment that it is "*a corporation within the State.*"

The term "association" is not synonymous with that of "corporation" either in legal or popular parlance.

It impliedly refutes the inference that it is a corporation at all, and almost necessarily implies that it is a voluntary combination of individuals formed in the county of Delaware.

Wherever the word is used in the law books, it is used to denote a body of persons in contradistinction to a corporation.

The statute requires the fact that it is a domestic corporation to be explicitly alleged.

In People *v.* Spencer, *supra*, it was held that the omission was fatal, and could not be inferentially supplied.

At p. 4 the Court say:

"The presentation of a proper petition lies at the basis of his jurisdiction. If any facts required to be stated are omitted, all the subsequent proceedings are fatally defective."

And at p. 5:

"The fact that the Railroad Company named is a corporation within the State must, we think, be stated in the petition."

See also People *v.* Van Valkenburgh, 63 Barb., 105; People *v.* Adirondac Co., 57 Barb., 661; People *v.* Franklin, 5 Lans., 129.

FIFTH.

The notice published by the County Judge of the hearing (fol. 138) was fatally defective in not specifying a place where the hearing was to be had.

Stewart *v.* Smith, 17 Wend., 517; Laws of 1869, chap. 907. § 2, p. 2304.

The second section of the act provides that "it shall be the duty of the said Judge at the time and *place named in the said notice* to proceed and take proof," &c.

This is the only grant of authority to the County Judge to proceed and take proofs which the act contains; and this grant is upon condition that the hearing shall be had at the "place named in said notice." If no place is named, then the Legislature has not conferred upon him any authority "to proceed and take proof," &c.

In these proceedings the County Judge does not sit as a court holding its sessions at a stated place fixed by statute, but he acts as a judicial officer of special and limited

jurisdiction, and can only legally act in the method pointed out by statute.

Under the laws of New York the County Judge can have any matter brought before him at any place he may designate within the county. Nor is he required by law to have an office at any specified place in the county, and hence the place of hearing cannot be supplied by reference to any statutory provision upon the subject.

This notice is the only process required to be served upon the tax-payers; and service by publication for ten days only is all the service that is required, and it should contain all the requisites of a valid process. Certainly, as great particularity should be insisted upon as in case of a summons in Justice's Court. Nor does the order directing the publication of the notice specify any place of hearing (folio 138.)

SIXTH.

The defendant in error was not a *bona fide* holder of the coupons upon which recovery was had. All the coupons specified in the first complaint, pages 2 to 36 inclusive, and amounting to $2709, were past due at the time of their alleged purchase, and had been presented for payment at the American Exchange National Bank in New York, where they were made payable, and payment thereof demanded and refused.

With reference to the coupons specified in complaint number two, pages 40 to 56, and amounting to $2044 and interest, the coupons falling due March 1, 1882, were past due at the time they came into the hands of defendant, and payment had been demanded and refused. The defendant was informed at the time of their transfer to him that their validity was disputed by the town, and that an action was then pending in the Supreme Court of the State, brought

for the purpose of establishing their invalidity, and restraining their collection and payment. The coupons in complaint number one were transferred after the Court of Appeals had decided that the bonds were void, and that no action could be maintained in the State courts to recover thereon.

No money or anything of real value was paid or parted with by the defendant upon the transfer of any of the bonds or coupons.

With reference to the bonds mentioned in complaint number two, it appears that at the time of their transfer a guarantee was given to the defendant in error that the bonds were properly and legally issued, and the defendant gave his note payable at Jersey City, in the State of New Jersey, where he resided, on demand for the face of the bonds. This note has never been paid. It was drawn due, and hence if transferred would be subject to all equities and defences in the hands of the transferree which might be made in case of an action brought by the original payee. As a matter of fact, it appears that it has never been transferred, and is still in the hands of the original holder.

To claim the protection of a *bona fide* holder it must be shown that the defendant was a purchaser for value, before maturity and without notice. All these conditions are wanting in this case. The defendant purchased after maturity, paid no value, and had notice that the validity of the bonds was disputed by the town. Nor was Benson, from whom the defendant in error received the bonds and coupons, a *bona fide* holder. It does not appear that he paid value for any of them, and he knew that the town refused payment upon the ground that the bonds were invalid, and that suits were pending in the courts of the State which involved the question of their validity, and

he states that the part which he took in the transfer of the bonds and coupons was for the purpose of putting them beyond the jurisdiction of the State courts and in order to enable suit to be brought thereon in the Federal courts. But aside from any question of actual notice, under all the decisions upon the subject the defendant in error must be charged with notice that the petition which was presented to the County Judge was unauthorized by law and was insufficient to confer jurisdiction upon that officer.

In McClure *v.* Township of Oxford (94 U. S., 432), it was held that every dealer in municipal bonds which upon their face refer to the statute under which they were issued is bound to take notice of the statute and all of its requirements. In that case the bonds were issued, and it was so stated upon the face of them, in pursuance of a certain act of the Legislature of the State of Kansas, which authorized the issuance of the bonds if a majority of the electors of the township should consent thereto at a special election to be held for that purpose upon thirty days' notice. The act was approved March 1, 1872, but was to take effect from and after its publication in the Kansas Weekly *Commonwealth*, which it seems occurred on March 21, 1872. The bonds recited on their face that the act was approved March 1, 1872, and that the town meeting was held on the 8th day of April, 1872, and that a majority of the electors voted to consent to issue the bonds, and Chief-Justice Waite, in delivering the opinion of the Court, at page 432 says:

"Municipal officers cannot rightfully dispense with any of the essential forms of the proceedings which the Legislature has prescribed for the purpose of investing them with power to act in the matter of such subscription." * * * "Every man is chargeable with notice of that which the law requires him to know, and of what which, after

being put upon inquiry, he might have ascertained by the exercise of reasonable diligence. In the present case, as it was stated in the act that it was not to go into effect until after its publication in the newspaper, every purchaser of the bonds had notice. Because it was a part of the statute he was bound to take notice of it, and he would therefore be put upon inquiry as to the time of publication, and could by reasonable diligence have ascertained that this did not take place until March 21st."

In the present case the defendant is charged with notice of the provisions of law under which it was attempted to issue these bonds, and that the presentation of the proper petition to the County Judge was essential in order to give him any authority to act at all in the matter. He was also charged with notice that under the law the County Judge could not pass upon the sufficiency of the petition; that he could not confer jurisdiction upon himself by simply deciding that he had it, and that under the act of 1869 the only authority that he had was to adjudge and determine, *first*, whether a majority of the tax-payers of the town of Andes had signed the petition, and, *secondly*, whether they represented a majority of the taxable property of the town. The defendant was as truly chargeable with notice that the petition was defective and insufficient to confer authority upon the County Judge to act as he would have been chargeable with notice of the want of jurisdiction in that officer in case he had proceeded to make an adjudication without the presentation of any petition at all. A petition substantially defective or unauthorized by law is as unavailing for the purposes of protection as the entire absence of a petition. The record of the proceedings is a public one, to which all may have access, and it was the duty of every purchaser of the bonds, in case he desired to be protected as a *bona fide* holder, to examine the record so far as it

might be necessary to ascertain whether jurisdiction had been conferred upon that officer to act under the provisions of the law in question.

In Anthony *v.* County of Jasper (101 U. S., 697) it was held that dealers in municipal bonds are charged with notice of the laws of the State granting power to make the bonds they find on the market, and hence in that case it was held that the purchaser of such bonds was bound to take notice of a provision of the law which required the bond to be certified to and countersigned by the Auditor of the State before its delivery.

And in Ogden *v.* County of Daviess (102 U. S., 641) the principle was re-affirmed, the Court saying; "We have always held that every holder of municipal bonds is chargeable with notice of the law by which his bond was authorized."

In Huff *v.* Jasper County (110 U. S., 53) the Supreme Court re-affirmed its decision in the case of Anthony *v.* County of Jasper (101 U. S., 693), holding that innocent holders for value are charged with the duty of knowing the law under which the bonds purport to have been issued, and of inquiring whether the conditions prescribed by the law have been complied with. The rule is also well settled that where there is any illegality in the inception of the instruments the transferree of the paper, in order to recover, must prove that he is himself a *bona fide* holder for value before maturity, and without notice.

Stewart *v.* Lansing, 104 U. S., 505; Smith *v.* Sac County, 11 Wall., 139.

In the case of Cowdrey *v.* Town of Canadea, decided June 1, 1883 (16 Fed. Rep., 532), the precise question arose which is involved in this case, namely, whether a purchaser of municipal bonds was chargeable with notice

of defects in the petition by reason of which the County Judge failed to acquire jurisdiction of the proceeding, and the Court, Wallace, Justice, held that "purchasers of municipal bonds executed by agents must ascertain at their peril that the delegated authority assumed has been conferred." The proceedings in that case were under the act of 1871, chapter 925, amending the act of 1869, which required that the petition should allege that the petitioners were a majority of the tax-payers, excluding those taxed for dogs and highway purposes only, and the Court on the same page further say;

"These acts authorizing municipal corporations to aid in the construction of railroads delegate to a portion of the tax-payers of a municipality the power to create a debt against the consent of other tax-payers, and subject the property of all to taxation for its payment. The special character of the jurisdiction exercised by the County Judge, and the nature of the power invoked by the tax-payers who set the proceeding in motion, both require that the proceeding be strictly pursued. The authority of a majority of the tax-payers of a town to incumber the property of a minority, against their will, in aid of a railroad or other corporation, receives no countenance from the principles of the common law. Every step, therefore, required by the statute must be in strict conformity therewith. (People *v.* Hulburt, 46 N. Y., 110.) The rule is also inflexible that when a court or judicial officer exercises a special statutory power outside the scope of the usual jurisdiction of the courts of general powers, the record of the proceedings must show that the statutory authority has been pursued; and in this regard the proceedings are on the same footing with those of limited and inferior jurisdiction." (Citing Denning *v.* Corwin, 11 Wend., 647; Thatcher *v.* Powell, 6 Wheat., 119; Dyckman *v.* New York, 5 N. Y., 434; Betts *v.* Bagley, 12 Pick., 572; Town of Huntington *v.* Town of Charlotte, 15 Vt., 46; Morse *v.* Presby, 25 N. H., 299.)

In the Township of East Oakland *v.* Skinner (94 U. S., 255), the Court, at page 258, make very clear the distinction between a case where jurisdiction has not been acquired and where there has been some irregularity in the exercise of the authority conferred. In that case the constitution of the State prohibited the issuing of bonds except they had been authorized under existing laws by a vote of the people of the town prior to their issue. There had been a vote taken, but not pursuant to any existing law upon the subject, and the Court, at page 258, say:

"We have held that there can be *no bona fide* holding where the statutes did not in law authorize the issue of the bonds. The objection in such case goes to the point of power. There is an entire want of jurisdiction over the subject. It is not the case of an informality, an irregularity, fraud, or excess of authority in an authorized agent. Where there is a total want of authority to issue the bonds, there can be no such thing as a *bona fide* holding."

In Northern Bank of Toledo *v.* Porter Township Trustees &c. (110 U. S., 608) this Court reviews all of the leading cases upon the question of the extent to which a municipal corporation is estopped by the recitals in the bond against a *bona fide* purchaser, and at page 616 the Court, by Mr. Justice Harlan, say:

"The adjudged cases, examined in the light of their special circumstances, show that the facts which a municipal corporation, issuing bonds in aid of the construction of a railroad, was not permitted, against a *bona fide* holder, to question, in face of a recital in the bonds of their existence, were those connected with or growing out of the discharge of the ordinary duties of such of its officers as were invested with authority to execute them, and which the statute conferring the power made it their

duty to ascertain and determine before the bonds were issued; not merely for themselves, as the ground of their own action, in issuing the bonds, but, equally, as authentic and final evidence of their existence, for the information and action of all others dealing with them in reference to it."

And hence it was held in that case that the certificate upon the face of the bonds that they were issued in part payment of a subscription to the capital stock of the railroad company made by the township in pursuance of the provisions of the several acts of the General Assembly of the State of Ohio, and of a vote of the qualified electors of the said township of Porter taken in pursuance thereof, did not estop the township from showing that the electors had no authority to vote upon the proposition because it was a condition precedent to their right to so vote that the County Commissioners should have refused to submit a similar proposition to the electors of the county for their determination.

In Dixon County *v.* Field (111 U. S., 83) this Court again reviewed the question, and the rule was there stated to be that a recital in a municipal bond of facts which the corporate officers had authority by law to determine and to certify estops the corporation from denying those facts, but a recital there of facts which the corporate officers had no authority to determine, or a recital of matters of law, does not estop the corporation, and at page 93 the Court, by Matthews, Justice, say:

"If the fact necessary to the existence of the authority was by law to be ascertained, not officially by the officers charged with the execution of the power, but by reference to some express and definite record of a public character, then the true meaning of the law would be, that the authority to act at all depended upon the actual objective exist-

ence of the requisite fact, as shown by the record, and not upon its ascertainment and determination by any one; and the consequence would necessarily follow, that all persons claiming under the exercise of such power might be put to proof of the fact, made a condition of its lawfulness, notwithstanding any recitals in the instrument."

In the present case the question relates to the sufficiency of the petition presented to the County Judge, which lies at the foundation of his jurisdiction of the proceeding, and that question is not one which that officer is authorized by law to determine nor which the commissioners have authority to pass upon. It is a question which must be determined by reference to the record itself, and if the petition is one not authorized by the laws of the State under which the proceeding is begun, all persons are bound to take notice of its defective character.

SEVENTH.

The defendant in error is not aided by the recitals in the bonds in question. The recital is in the following language: "Issued by virtue of an act of the Legislature of the State of New York entitled 'An act to authorize the formation of railroad corporations and to regulate the same, passed April 2, 1850,' and an act to amend an act entitled 'An act to authorize the formation of railroad corporations and to regulate the same, passed April 2, 1850,' so as to permit municipal corporations to aid in the construction of railroads, passed May 18 (1869), sixty-nine three-fifths being present.

"These acts authorize any city or town, except in the counties of New York, Kings, Erie, Greene, Albany, Westchester, Ontario, Seneca, Yates, Onondaga, and Niagara to subscribe to the stock of any railroad corporation

formed in pursuance of said acts, and these acts authorize the town of Andes to subscribe to the stock of the Delhi and Middletown Railroad Company, and to issue town bonds in payment thereof, all necessary and legal proceedings having been taken and had under said acts."

This is simply a statement that the bonds purport to be issued under the act referred to, and there is no fact alleged which the commissioners had authority to determine. The extent to which any of the authorities go is to hold that where the commissioners who issue the bonds, or where a court or other officer has authority conferred upon him or them by law to determine whether certain conditions precedent have been complied with, the certificate or a recital in the bond that such conditions had been complied with would be regarded as sufficient to protect a *bona fide* holder and estop the corporation from subsequently asserting as against such holder that the conditions had not been complied with. But all the authorities agree in holding that the town is not estopped by the recitals in the bond, except as to those facts connected with or growing out of the discharge of the ordinary duties of its officers who were authorized to execute the bonds and facts which they were to determine before the bonds were issued. (Buchanan *v.* Litchfield, 102 U. S., 278; School District *v.* Stone, 106 U. S., 183; Carroll County *v.* Smith, 111 U. S., 556; Daviess County *v.* Dixon, 117 U. S., 657.)

We think that no case can be found where recitals in the bonds were held to estop the corporation, unless they were made by officers who had authority by law to ascertain and determine whether the facts existed which are recited in the bonds. The rule in this respect we believe is correctly stated by this Court, per Bradley, Justice, in County of Warren *v.* Marcy, at page 104, 97 U. S.: "We have substantially held that if a municipal body has law-

ful power to issue bonds or other negotiable securities, dependent only upon the adoption of certain preliminary proceedings, such as a popular election of the constituent body, the holder in good faith has a right to assume that such preliminary proceedings have taken place, if the fact be certified on the face of the bonds themselves, *by the authorities whose primary duty it is to ascertain it.*"

In that case the bonds were executed by the Board of Supervisors of the county, and they were authorized by law to determine whether a majority of the legal voters of the county had consented to issue the bonds at a special election called for that purpose, and they stated or recited in the bond that such election had been held, and that the bonds were issued in conformity with the vote of the electors thereat.

So in Insurance Company *v.* Bruce (105 U. S., 328) the recitals were made by the supervisor and town clerk, and they were facts which by law they were authorized and required to determine and to certify; and in Nauvoo *v.* Ritter (97 U. S., 389) the recitals were made by the common council of the city in an ordinance authorizing the issuing of the bonds and printed on the back of the bond, and the recital was as to facts which they were by law authorized to determine.

But in the present case the recital is made by commissioners who are not officers of the town, and who are appointed by the County Judge for a specific purpose, and who have no authority to do anything or to bind the town in any respect, except so far as they are specially authorized by the act under which they were appointed. They had no authority to determine whether the petition which was presented to the County Judge was sufficient to confer jurisdiction upon him to act in the matter, and hence any recital or certificate which they might make to that

effect would be a nullity. The purchaser of the bonds is bound to take notice of the statutory authority of the commissioners.

It may be said that the case of Lyons *v.* Munson (99 U. S. 684) is in conflict with the views here expressed, but the point here made does not seem to have been there considered. There was a recital upon the face of the bond that it was not only issued under the authority contained in the act of 1869 and the amendments thereto, but under and pursuant to a judgment of the County Judge of Wayne County duly rendered and entered of record under and pursuant to a petition of the tax-payers of the town. The opinion of the Court is very brief, but it is apparent that the case was made to turn upon the fact that there was a recital upon the face of the bond that the judgment of the County Judge was duly rendered, &c. But none of the cases referred to go to the extent of holding that the commissioners can determine whether the County Judge had jurisdiction of the proceedings or not, and they are all cases where the recital was made by an officer who had authority to ascertain and determine whether the facts alleged were true.

In Lynde *v.* The County (16 Wall., 6) the recital was to the effect that the bonds were issued in accordance with a vote of the county, and it was made by the County Judge, who, by the law of Iowa, was required to cause the vote to be taken, and to ascertain and declare the result.

In Mercer County *v.* Hacket (1 Wall., 33) the recital was by the County Commissioners, who had authority to determine whether the conditions prescribed by law had been complied with. And the same is true in the case of The Commissioners of Knox Co. *v.* Aspinwall (21 How., 539).

In Township of Rock Creek *v.* Strong (96 U. S., 271) the case turned upon whether a majority of the electors had voted in favor of the issue of bonds, and as it appeared that it was made the duty of the commissioners of the county to canvass the vote and certify the result and they had certified that a majority of the qualified electors voting had voted in favor of the proposition, it was held that their certificate was conclusive where the bonds had passed into the hands of a *bona fide* holder.

It will thus be seen that in all the cases, with the possible exception of Lyons *v.* Munson, the officers making the recitals were those who were charged by law with the duty of ascertaining and determining whether the conditions of the law had been complied with.

In the later decisions upon the subject this Court has more clearly stated the rule.

In School District *v.* Stone (106 U. S., 183), where the bonds were issued by school district trustees by authority of an election of the voters of the school district held by them, and where the bond contained a recital that "it is issued by the Board of School Directors by virtue of an election of the voters of said school district, held on the 31st day of July, 1869, in conformity with the provisions of chapter 98 of acts 12th General Assembly of the State of Iowa," it was held that the district was not estopped by the recitals from showing that the indebtedness created by the issue of bonds was in excess of the amount permitted by the State constitution, although such amount was to be ascertained by the last State and county tax-list previous to incurring the indebtedness, and the Court say that the rule in regard to the effect of recitals should receive strict construction where it is proposed to exclude inquiry as to whether the bonds were in violation of the provisions of the constitution or of the statute, of the provisions of

which all must take notice. The Court also say, at page 187:

"We are unwilling to enlarge or extend the rule, now established by numerous decisions. Sound public policy forbids it. Where the holder relies for protection upon mere recitals, they should, at least, be clear and unambiguous, in order to estop a municipal corporation, in whose names such bonds have been made, from showing that they were issued in violation, or without authority, of law."

In Carroll County *v.* Smith (111 U. S., 556) there was a recital in the bonds that it was authorized by several statutes of the State, which were referred to by their title, but this Court held that such recital did not estop the municipality from showing that the issue was not authorized by a vote of two-thirds of the voters of the corporation as required by the constitution of the State, and the Court held that the recital simply served to point out the particular laws under which the transaction might lawfully have taken place.

In Northern Bank *v.* Porter Township (110 U. S., 608) the cases relating to this point are examined and reviewed, and the Court holds "the facts which a municipal corporation, issuing bonds in aid of a railroad, is not permitted, against a *bona fide* holder, to question, in face of a recital in the bonds of their existence, are those connected with or growing out of the discharge of the ordinary duties of such of its officers as were invested with authority to execute them, and which the statute conferring the power made it their duty to ascertain and determine before the bonds were issued."

The recitals in that case stated that the bonds had been issued "in pursuance of the provisions of the several acts of the State of Ohio and of a vote of the qualified electors of said township of Porter taken in pursuance thereof."

Counsel for the bondholders argued that this recital imported a compliance in all respects with the law, and, therefore, the township will not be allowed, against a *bona fide* holder for value, to say that the circumstances did not exist which authorized it to issue the bonds. But the Court decline to assent to this proposition, although stating on page 615 that it could not be denied that there are general expressions in some former opinions which, apart from their special facts, would seem to afford support to this proposition in the general terms in which it was presented. But (quoting from 6 Wheat., 264, and 16 How., 275, 287) they say "it is a maxim not to be disregarded that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision."

In Daviess County *v.* Dickinson (117 U. S., 657) the bonds were issued by the County Court, and the County Judge endorsed upon each a certificate that it was issued pursuant to a certain act of the Legislature of Kentucky, and was authorized by an ordinance of the County Court, and the Court held that the certificate did not estop the county from showing that the issue of the bonds in question was unauthorized. At page 664 they say: "Neither the statute, nor the vote of the people, nor the order of the County Court empowered him to make such a certificate, or to determine the question whether the County Court had exceeded the power conferred upon it. An officer's certificate of a fact which he has no authority to determine is of no legal effect" (citing Dixon County *v.* Field, 111 U. S., 83).

In this latter case the proposition is very clearly stated as follows: A recital in a municipal bond of facts which

the corporate officers had authority by law to determine and to certify estops the corporation from denying those facts, but a recital either of facts which the corporate officers had no authority to determine or a recital of matters of law does not estop the corporation.

The Court say, at page 92:

"Of course, this does not extend to or cover matters of law. All parties are equally bound to know the law; and a certificate reciting the actual facts, and that thereby the bonds were conformable to the law, when, judicially speaking, they are not, will not make them so, nor can it work an estoppel upon the county to claim the protection of the law. Otherwise it would always be in the power of a municipal body, to which power was denied, to usurp the forbidden authority, by declaring that its assumption was within the law. This would be the clear exercise of legislative power, and would suppose such corporate bodies to be superior to the law itself.

"And the estoppel does not arise, except upon matters of fact which the corporate officers had authority by law to determine and to certify. * * * But it still remains, that there must be authority vested in the officers by law as to each necessary fact, whether enumerated or non-enumerated, to ascertain and determine its existence, and to guarantee to those dealing with them the truth and conclusiveness of their admissions. In such a case the meaning of the law granting power to issue bonds is, that they may be issued, not upon the existence of certain facts, to be ascertained and determined whenever disputed, but upon the ascertainment and determination of their existence, by the officers or body designated by law to issue the bonds upon such a contingency. This becomes very plain when we suppose the case of such a power granted to issue bonds, upon the existence of a state of facts to be ascertained and determined by some persons or tribunal other than those authorized to issue the bonds. In that case it would not be contended that a recital of the facts in the instrument itself, contrary to the finding of those charged by law with that duty, would have any legal effect.

"So, if the fact necessary to the existence of the authority was by law to be ascertained, not officially by the officers charged with the execution of the power, but by reference to some express and definite record of a public character, then the true meaning of the law would be, that the authority to act at all depended upon the actual objective existence of the requisite fact, as shown by the record, and not upon its ascertainment and determination by any one; and the consequence would necessarily follow, that all persons claiming under the exercise of such a power might be put to proof of the fact, made a condition of its lawfulness, notwithstanding any recitals in the instrument."

In the present case we contend that it is the record made up in the proceeding before the County Judge which is to be resorted to in order to determine whether any authority existed for the appointment of the commissioners and for the issue of bonds by them, and if an examination of that record discloses the fact that the County Judge never acquired jurisdiction of the proceeding the defect cannot be aided or supplied by any recital in the bonds of facts which the commissioners have no authority to ascertain and determine.

It is also submitted that there is no recital in these bonds of any fact; that there is simply a reference to the law which, when complied with, authorizes the issue of bonds of this character. The proper construction of the second paragraph of the recital being that the acts referred to authorize the town of Andes to subscribe to the stock of the Delhi and Middletown Railroad Company, and to issue town bonds in payment thereof when the necessary and legal proceedings have been taken and had thereunder. It does nothing more than to especially direct the attention of the purchaser of the bonds to the acts under which bonds of this character may be issued. The purchaser is thus put upon his inquiry, and is bound to as-

certain from the record of the proceeding whether the provisions of the law have been complied with.

EIGHTH.

The payment of interest does not estop the town from asserting the invalidity of the bonds, nor can it be construed to be a ratification of their issue. The defects in this case are jurisdictional, and for the same reasons above stated with reference to the effect of the recitals in the bonds, these jurisdictional defects cannot be cured by the involuntary payment of interest by means of forced tax levies. The passive submission of the tax-payers to the collection of moneys for this purpose and their application to the payment of interest connot validate obligations which the town did not have authority to create. There are several decisions of the Federal courts to this effect.

In Thomas *v.* Town of Lansing, decided September 6, 1882 (14 Fed. Rep., 618), the bonds recited that they were issued under the provisions of the New York Bonding Act of 1866, and the several acts amendatory thereof and supplementary thereto, and purported to be attested by the hands and seals of three persons as duly appointed commissioners of the town, and the plaintiff was a *bona fide* holder, and interest had been paid and the stock certificate had been retained by the town, but the Court hold, at page 627, that the case falls within the principles adjudged in Marsh *v.* Fulton Co., 10 Wall., 676, because the power of the town to contract never existed. In such a case there can be no protection of the holder as an innocent purchaser, and no ratification of a power which never existed, by such alleged acts of ratification as are shown in this case, Citing East Oakland *v.* Skinner, 94 U. S., 255, 258; South Ottawa *v.* Perkins, *id.*, 260, 269; McClure *v.* Oxford,

id., 429; Ogden *v.* Daviess Co., 102 U. S., 634, 641; Buchanan *v.* Litchfield, *id.* 278.

In Cowdrey *v.* Town of Canadea interest had been paid, and it was held that the bonds were void because the petition which was presented to the County Judge was insufficient to confer jurisdiction upon that officer, and with reference to the ratification of the issue of the bonds by the payment of interest, the Court, at page 534, says: "If the bonds had been irregularly issued by the agents of the defendant, within the doctrine declared in several adjudications which are controlling in this Court, the payment of interest upon them for several years would amount to a ratification by the town, although the interest was raised by taxation. But this doctrine is not applied in cases where there is a total want of authority on the part of the town to issue obligations." Citing Parkersburgh *v.* Brown, 106 U. S., 487; Thomas *v.* Town of Lansing, 14 Fed. Rep., 618.

In the case of Purdy *v.* Town of Lansing, decided at the present term of this Court, interest had been paid, but the bonds were nevertheless held to be void for want of jurisdiction.

In the present case the taxes were not raised by any action of the town; they were levied by the Board of Supervisors of the County, who issued the warrant to the tax-gatherer.

It should also be borne in mind that in this case the town has received no benefits whatever from the subscription to the stock of the railroad company. The road has not been built and put in operation, and never will be, the company having become defunct, and its franchise extinguished. In considering the question of estoppel this fact is always regarded as important.

In the Town of Duanesburg *v.* Jenkins (57 N. Y., 177),

where the power of the Legislature to pass a confirmatory statute and cure irregularities in the issue of bonds was in question, the Court placed much stress upon the fact that the whole consideration of the issue of the bonds had been received by the town in the completion of the road and the issuing of the stock for its benefit, and this Court also emphasizes that fact in its opinion in the case of Thompson *v.* Perrine (103 U. S. 817), it appearing that the town had received the benefits which the original subscription was designed to secure.

NINTH.

If it is not clear from the evidence that defendant was not a *bona fide* holder of the bonds and coupons the trial Judge should have submitted that question to the jury. That right was expressly reserved in the order which was made at the June circuit (fols. 105-6), and the request was seasonably made for leave to go to the jury upon that question, which was denied and an exception taken (fol. 267).

For the same reason plaintiff in error had the right to have the verdict of the jury upon the issue raised by the pleadings that the defendant in error was not the real party plaintiff in interest in the court below. This was an issue authorized by the code of New York (§ 449), and the evidence plainly tended to sustain the allegations of the answer in this respect.

TENTH.

The act of 1869 was violative of the provision of section 9 of the constitution of the State of New York, which declares that—

"The assent of two-thirds of the members elected to

each branch of the Legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes."

There are 128 members of the Assembly and 32 members of the Senate of New York. The proof shows that this bill received but 71 votes in the Assembly, 15 short of a two-thirds vote, and but 19 in the Senate, 3 less than two-thirds of that body (fol. 266).

The act is general in its scope, being applicable to the whole State, with the exception of a few counties, and provides a scheme whereby the public money and property are appropriated to aid local and private enterprises.

The sixth section declares that "the bonds of any municipal corporation, issued pursuant to the provisions of this act, shall be a charge upon the real and personal estate within the limits thereof, and the principal and interest thereof when due shall be collected and paid in like manner as other debts, obligations, and charges against the said municipal corporation."

It is as direct an appropriation of the public moneys and property for a local and private purpose as could well be made under the circumstances, and is within the language and the intent of the constitutional provision, which was designed for the protection of the people against legislation of this character.

ELEVENTH.

The judgment entered at the Circuit should therefore be reversed and judgment directed for the plaintiff in error, dismissing the complaint of the plaintiff below with costs.

I. H. MAYNARD,
Counsel for Plaintiff in Error;
Stamford, N. Y.

Office Supreme Court U. S.
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JAMES H. MCKENNEY,
CLERK.

U. S. Supreme Court.

THE TOWN OF ANDES, PLAINTIFF IN ERROR,

v.

ALBERT SLAUSON, DEFENDANT IN ERROR.

No. 225.

PLAINTIFF'S SUPPLEMENTAL BRIEF.

First. In any view of the form in which the case is presented, the first and second points in plaintiff's brief involving the question of the jurisdiction of the circuit court are properly presented for the consideration of the Court, and the questions raised thereby are reviewable upon this writ of error.

No exception is necessary in order to entitle the plaintiff to raise the question of jurisdiction.

Second. The question of the validity of the bonds upon which defendant sought to recover in the court below is sufficiently presented by the exceptions taken upon the trial to the admissibility of the proofs in the court below, and by the exceptions taken to the finding of the trial judge.

Section 914 of the Revised Statutes of the United States provides that the practice, pleadings, and forms and modes

of proceedings in civil causes in the circuit and district courts shall conform, as near as may be, to the practice, pleadings, and forms and modes of proceedings existing at the time in like causes in the courts of record of the State within which such circuit or district courts are held, any rule of the court to the contrary notwithstanding.

Under the Code of New York (Sections 994 and 996) it is only required that exceptions be taken to conclusions of law; and under those sections it has been repeatedly held by the courts of the State that an exception to the conclusion of law that the plaintiff is entitled to recover upon the proofs presented is sufficient to present the question whether, upon the uncontradicted proofs in the case, a cause of action has been made out. It is not claimed that disputed questions of fact can be thus reviewed, and there is no such claim made in this case. The plaintiff sets forth the proceedings which resulted in the issue of these bonds and the bonds themselves in his complaint as grounds of his recovery. The plaintiff in error put in issue the validity of the bonds, and he also objected, upon the trial, to the admission of the record evidence offered by the plaintiff, and excepted to the ruling of the court overruling his objection and admitting the evidence. These exceptions will be found in the bill of exceptions, on pages 63, 64, 67, 68, 79, 81, 92, 97, 99, &c. The bill of exceptions begins at page 63, and, while it contains all the evidence, it shows that these exceptions were made to its admission, which of themselves fully and properly raise the question for review whether the bonds and coupons in suit were lawfully issued.

In the case of Santa Anna *v.* Frank (113 U. S., 339) the bill of exceptions contained all the evidence, but showed no exception to its admission, and there was also a general count in the complaint for money paid and money had and

received which was sufficient under the statute of Illinois to support the judgment without reference to any question of the legal authority to issue the bonds described in the first count, and the court, therefore, affirmed the judgment. But the pleadings here are not in that form. There is but a single count in the complaint setting forth with particularity the bonds and coupons and the proceedings under which they were issued.

The plaintiff in error contends that upon the uncontradicted proof this cause of action was not established, and it is submitted that his exceptions contained in the bill of exceptions entitles him to the right to have that question reviewed by this Court.

In Prentice *v.* Stearns (113 U. S., 435) it was held that in the absence of a bill of exceptions setting forth evidence no error can be assigned in respect to facts found by the court when the parties waive a trial by jury. But in the present case the bill of exceptions does set forth the evidence, and it is also submitted that under a fair construction of the order of the circuit judge there was no waiver of a trial by jury. In the case of Martin *v.* Fairbanks (112 U. S., 670) there was no exception to the rulings of the court in the progress of the trial in the admission or exclusion of evidence or otherwise.

So in the United States *v.* Dawson (101 U. S., 569) it was held that the finding of the circuit court upon a question of fact cannot be reviewed on a writ of error. But we do not seek here to have a review of the finding of the circuit court upon a question of fact, but upon a question of law.

In Supervisors *v.* Kennicott (103 U. S., 554) there was an agreed statement of facts, but there was nothing but a general finding of the circuit judge for the plaintiffs on the issue, and that they had sustained damage to the

amount of $40,000, and it was held that this Court, upon writ of error, could determine whether the facts set forth in the agreed statement were sufficient in law to support the judgment. That is substantially all that is sought in this case, namely, to have this Court to determine whether upon the undisputed facts relating to the issue of these bonds the conclusion of law of the circuit judge, that the defendant in error was entitled to maintain an action upon them, was correct.

Third. A fair construction of the order made by Judge Coxe and of the proceedings upon the trial puts the case here upon the same footing as if a jury had been present at the trial at a circuit and the judge had refused to submit the case to a jury or the question of facts presented by the evidence, and an exception had been duly taken to such refusal.

It is evident that Judge Coxe intended that the plaintiff in error should have the benefit of a jury trial in case it appeared upon the trial that there was any question of fact involved proper for presentation to a jury. If the proceedings are susceptible of more than one construction that construction should be adopted which will insure to the plaintiff in error the right of review here.

The statute giving the right of review is a remedial one and should be liberally construed.

It is further submitted that it is very clear that the trial judge and both parties believed that the proceedings were in proper form, and that the findings and exceptions thereto were sufficient to present the cause for review here upon its merits.

This is very apparent from the language of the judge in his opinion and also from the brief of the counsel of the defendant in error. No point was made in his brief of the insufficiency of the findings or exceptions. Both parties

have come here expecting that the case would be disposed of on its merits, and prepared to submit it for decision upon its merits.

If the Court should finally conclude that the case is not in proper shape for the want of specific findings, then it is requested, in the furtherance of justice, that the cause be remanded to the court below with leave to the plaintiff in error to have specific findings made by the trial judge, and upon such terms as to the Court may seem just.

Dated April 2, 1889.

I. H. MAYNARD,
of Counsel, Stamford, N. Y.

EVENING POST JOB PRINTING OFFICE—N Y.

Supreme Court of the United States.

THE TOWN OF ANDES,
Plaintiff in Error,

AGAINST

ALBERT SLAUSON.

Brief for the Defendant in Error.

STATEMENT OF FACTS.

Upon April 6, 1882, the defendant in error, being a citizen of New Jersey, purchased $14,600 of bonds of the Town of Andes, Delaware County, New York, and upon January 17, 1884, he brought an action in the United States Circuit Court, for the Northern District of New York, to recover of the Town of Andes the coupons unpaid at that date, $2,044, upon those bonds.

Upon December 13, 1883, the defendant in error purchased $2,709 of coupons from other bonds of the same town, and subsequently brought another action upon them.

These two actions were tried together, by stipulation, and, upon the request of the plaintiff in error, were consolidated after the trial (fol. 107). Upon the trial the

Court made a general finding in favor of the defendant in error, and found that he was entitled to judgment for the amount of coupons in the first-named action, amounting, on October 1, 1884, to $2,264.84, and in the second action to $3,047.62, and directed judgment in favor of Mr. Slauson in the consolidated action for the aggregate of those sums. From the judgment entered upon this decision this writ of error has been taken.

The Delhi and Middletown Railroad Company is a corporation, duly incorporated November 14, 1870, under the laws of the State of New York, for the purpose of constructing and operating a railroad from Delhi to Dean's Corners, in the County of Delaware, through the towns of Delhi, Bovina, Andes and Middletown.

Upon March 2, 1871, the Board of Directors located the route by Tremperskill and Fish Lake, making the location by Lumberville and Shavertown and Andes village and Fish Lake, and upon March 4, 1871, a map and profile of said route were filed in the Clerk's office of Delaware County. This location was never changed, but in 1872 an amended map was filed, changing the course between Lumberville and Shavertown, a distance of about eight miles, so as to make the distance a little shorter. After the road had been thus actually located, and upon May 6, 1871, nineteen petitions were presented to the County Judge of Delaware County praying that the Town of Andes might be bonded in the sum of $98,000 in aid of said road. Each petition was separate, and the one numbered 7, to which a large number of signatures were attached, was in the form prescribed by the general Bonding Act, chapter 907 of 1869, and attached thereto was a verification by one of the subscribers to petition number 7. None of the other petitions had a verification attached; each had the same printed heading as number 7, but petition number 1 had at the end of the printed heading, "on condition that said road is located by Fish Lake and Shavertown;" petition number 4 had interlined, "on condition that said road is located by Fish Lake and Shavertown or village;" petition number 14 had interlined at the end of the printed head-

ing and before signatures, "above *conditions* shall be null and void unless said road shall be located by Shavertown and Lumberville."

Upon presentation of the petitions, the County Judge made the usual order for a hearing to be had before him on May 22, 1871, at his office, which notice was regularly published. Upon May 22, 1871, a hearing was had. Thereafter the County Judge made the adjudication showing the requisite majority consent, and also appointed three Commissioners. The papers were all filed in the Clerk's office. the adjudication was entered of record in full May 22, 1871, in Register No. 3, at pages 169–170, also was docketed in the docket and judgment book. Thereafter the Commissioners proceeded to issue $98,000 of bonds, all dated September 1, 1871, payable September 1, 1901, and the same were registered November 30, 1871, in the Delaware County Clerk's office, and thereupon delivered to the railroad company, and put upon the market, and sold at par or a premium. For more than ten years thereafter the interest was regularly paid by the town semi-annually, making twenty interest coupons paid. In 1878, in pursuance of a resolution of the town meeting, $3,000 of the principal were paid. The town received $98,000 of stock in exchange for the bonds, and held and voted upon this stock, and acts of the Legislature were procured in 1874 and 1875 with reference to the stock owned by the town. During all this time, from May 22, 1871, no question was raised by any one as to the validity of these bonds, and they were sold as securities of the highest value. The railroad company expended $200,000 in constructing its road, but became embarrassed and was foreclosed. Then, and not till then, after the lapse of ten years, the town resolved to repudiate.

Point I.

The statutory authority to issue these bonds was ample and valid. This authority is found in chapter 907 of the Laws of New York for 1869, known as the General Railroad Bonding Act of New York, and is upheld by numerous decisions of this Court.

The Town of Andes is situated in Delaware County, one of the counties included in the act, and the Delhi and Middletown Railroad Company is a corporation of the State of New York ; the act therefore conferred upon this town the capacity to issue its bonds in aid of this railroad. As is universally the case, the consent of the taxables was required, and, in order that this consent might be conclusively determined, the County Judge of Delaware County was constituted a tribunal to hear and determine this question, and provision was made in the act for the review of his decision by *certiorari*, if desired. Section 2 of the act declares that "the judgment of the County Judge and the record thereof shall have the same force and effect as other judgments and records in courts of record in this State."

Point II.

The questions involved in this case regarding the validity of the bonds are *res adjudicata* in this Court, not merely as controlled by the general doctrine of the Court in such cases, but by the direct adjudication of this Court in the case of Munson *vs.* Town of Lyons, 12 Blatchford, 539; affirmed 99 U. S. Supreme Court, 684. In order to show the exact similarity of these cases, reference is made to the opinion of Judge Wallace in the Circuit Court, 12 Blatchford, 541.

"Upon February 6, 1871, the petition was presented to "the County Judge of Wayne County, containing [the "usual statements in such petitions, and also containing "the conditions], 'provided that the terminus of said "road be made at Nicholas Point in the Town of Huron.' "It is understood that the stock so to be taken is to em- "brace and include the stock now already subscribed and "taken by persons residing in said Town of Lyons, "amounting to the sum of $16,400.' The County Judge "caused notice to be given and proceeded to take proofs, "and, during the progress of taking the proofs, and on "May 12, 1871, the Legislature passed an act, chapter 925 "of 1871, by which certain sections of that act were "changed in important particulars, while in other sections "no changes were made. None of the sections of the "prior act were repealed in terms, but the sections "referred to were modified by the words 'are amended "to read as follows:" All proceedings, after the amenda- "tory act was passed, were conducted pursuant to the "requirements of that act, and, on May 17, 1872, the "County Judge adjudged that the allegations of the peti- "tions were proven and appointed Commissioners. The "Act of 1871 required that the petition should be filed by "the County Judge as a part of the judgment roll, "and that his judgment be entered of record in "the Clerk's office of his county. It also made "provision for the review of the proceedings by "*certiorari*, by which the appellate courts were au- "thorized, 'in appeals now pending, and in all future pro- "ceedings to reverse or reform or modify the determina- "tion or to remand the whole matter back to the county "judge to be heard and determined by him.' "

The validity of the bonds of the Town of Lyons was maintained by the Circuit Court, and upon appeal this Court said, 99 U. S., 684: "Propositions covering the en- "tire ground of the controversy between the parties have "been so frequently decided by this Court that any ex- "tended examination of the case is unnecessary. The "Town of Orleans *vs.* Platt, 99 U. S., 676: Our last adjudi-

"cation of this class is conclusive in favor of affirming "the judgment of the Circuit Court. The County Judge, "unquestionably, had jurisdiction to decide upon the ap- "plication made by the taxpayers. His judgment, until "reversed, was final. If there were errors, the proceed- "ing should have been brought before a higher Court for "review by writ of *certiorari*. The judgment rendered "can no more be collaterally attacked in this case than "could any other judgment of a court of competent jur- "isdiction. * * * The recital in the bonds sets forth "the judgment of the County Judge that it was duly ren- "dered. * * * Under such circumstances the recital "is an estoppel. To imply the intent that such obliga- "tions, after they are negotiated shall be vulnerable to the "objections here urged, would be to impute bad faith to "the authors of such legislation towards those who are "to be induced to invest in such bonds."

Now, in the case at bar, it appears that upon May 10, 1871, nineteen petitions were presented to the County Judge of Delaware County, of which sixteen were, in all respects, conformable to the most rigid criticism which can be made with reference to the form of a petition, and one of them, No. 7, was duly verified. The other three petitions contained interlineations, all, in substance, the same, namely, "on condition that the road shall be located by Shavertown, Andes and Fish Lake." It is proven in this case that, as a matter of fact, the road had actually been located upon the route designated in these three petitions before the petitions were presented to the County Judge (fols 155, 181, and map, fol. 191). Assuming, however, for the purposes of the present argument, a position most favorable to the appellant, namely, that these three petitions were a part of the original petition and qualify the whole of it with an actual subsisting condition, then there is presented the first question which was presented in the Town of Lyons case, and which was so emphatically disposed of in the decisions just cited. The Act of 1871 was passed upon May 12th, after the County Judge of Delaware County had assumed jurisdic-

tion and had made the order for publication required by both acts. The only essential change made by the Act of 1871, was made in section 1 of the act, by inserting a requirement that the majority of the taxpayers should be exclusive of those taxed for dogs or highway tax only, and by defining the term taxpayers as persons assessed for property, and not for dogs or highway tax only, under this section it has been held by Judge Blatchford in the United States Circuit Court, that a petition in the form required by the Act of 1869 was sufficient to confer jurisdiction upon the County Judge, although presented after May 12, 1871. It is unnecessary, however, to discuss that proposition here, as this petition, when presented, conformed to all the requirements of the Act of 1869, and, therefore, gave the County Judge jurisdiction; and the Act of 1871, instead of manifesting an intention of affecting or arresting pending proceedings, provided for their continuance by prescribing in its fourth section the mode of proceeding in matters then pending, and that hereafter persons taxed for dogs or highway tax should not be counted. The same identical question arose in the Town of Lyons case, and was fully considered and answered by Judge Wallace in his opinion. It may be noticed that the courts of the State of New York have also decided that proceedings under the Act of 1869 were not impaired by the passage of the Act of 1871.

Calhoun *vs.* Delhi & Middletown Railroad, 28 Hun, 379.

Point III.

No case can be cited where the statutory authority conferred upon a municipality to issue bonds, has not been coupled with conditions. Of course, if there is no capacity conferred upon the municipality to issue its bonds in any event, there can be no liability nor any

estoppel; but where the statutory authority has been conferred upon the performance of certain conditions, then it is the settled doctrine of this Court that an estoppel may be created, and it is quite unnecessary to suggest that this Court in so deciding has overruled, after full consideration, the decisions of many State courts.

It is settled in this Court that such an estoppel will arise.

1. If the statute provides a tribunal to ascertain whether the antecedent conditions have been complied with, and that tribunal has so decided.

Knox *vs.* Aspinwall, 21 Howard, 539.
Town of Venice *vs.* Murdock, 92 U. S., 494.

2. If the bonds made by the *de facto* Commissioners contain a recital of the existence of the power.

3. If the town has received and retained the stock of the railroad.

Pendleton County *vs.* Amy, 13 Wall., 297.

4. If the municipality has paid, for a time, interest upon the bonds.

All these grounds of estoppel exist in the present case.

I. –In Orleans *vs.* Pratt, 99 U. S., 676, this Court says, construing this very statute:

"The County Judge was the officer charged by law to decide whether the bonds could be legally issued, and his judgment was conclusive until reversed by a higher court."

See also

Lynde *vs.* The County, 16 Wall., 6.
Township of Rock Creek *vs.* Strong, 96 U. S., 271.
Para *vs.* Boller, 107 U. S., 529.

II.—These bonds upon their face recite the circumstances which bring them within the power. They specify the proper acts and recite that they are issued thereunder, and that all necessary and legal proceedings have been taken and had under said acts. In connection with this point, it may be further noticed that the Legislature of the State of New York has expressly recognized the Commissioners of the Town of Andes as legal Commissioners, and has also recognized the title of the town to the stock received by it in exchange for its bonds.

Chapter 453, Laws of 1874.

III.—In Pendleton County *vs.* Amy, 13 Wallace, 297, this Court said:

"Having exchanged the bonds for the stock, we think the county cannot retain the proceeds of the exchange and assert against the purchaser for value that, although the Legislature empowered it to make them on certain conditions, they were issued in disregard of the conditions."

IV.—The full and abundant recognition of the validity of these bonds by the Town of Andes, evidenced by its receipt and retention of the stock in the railroad, and by the payment of interest upon the bonds for ten years, and by the payment of a portion of the principal is a complete estoppel.

Rich *v.* Town of Meentz, 18 Fed. R., 52.
Whiting *v.* Town of Potter, 18 Bl., 165.
Oswego Bk. *v.* Wolcott, 19 Bl., 370.
Calhoun *v.* D. & M. R. R. Co., 28 Hun, 379, 398–402.
Dillon, Municipal Corporations, Vol. I., p. 548.
Coloma *v.* Eaves, 92 U. S., 484.
Moultrie Co. *v.* Bk., 92 U. S., 631.
Marcy *v.* Oswego, 92 U. S., 637.
Douglass Co. *v.* Bolles, 94 U. S., 104.
Weyannega *v.* Ayling, 99 U. S., 112.

Supervisors *v.* Galbraith, 99 U. S., 212.
Brooklyn *v.* Ins. Co., 99 U. S., 362.
Wilson *v.* Salamanca, 99 U. S., 499.
Orleans *v.* Platt, 99 U. S., 676.
Lyons *v.* Munson, 99 U. S., 684.
Douglass Co. *v.* Pike, 101 U. S., 677.
Supervisors *v.* Schenck, 5 Wall., 772.
Marsh *v.* Fulton Co., 10 Wall., 676.

Point IV.

At the time that these bonds were issued it was the law in the State of New York, under the decisions of its courts, that a conditional petition in aid of a railroad was valid.

(People *ex rel.* Hoag *v.* Peck, 4 Lansing, 528, decided at General Term of the Supreme Court in November, 1871.) The Court placed its decision upon the fact, among other things, that section 1 of chapter 925 of the Laws of 1871, which took effect, as in this case, after the proceedings had been commenced, sanctioned just such a condition, and also upon the ground that, if the Act of 1871 did not apply to these proceedings, the condition was valid under chapter 507 of the Laws of 1870. "For, by that act, it was provided that the Railroad Company might enter into an agreement with the Commissioners, which, among other things, should limit and define the place or places where, and the purposes for which the bonds or their proceeds should be used. The power to make such an agreement was manifestly conferred for the benefit of the taxpayers themselves, and they had the right, therefore, to insist upon it that it should be observed and made use of according to their direction by the Commissioners who might be appointed in the proceedings, and the most practical mode of giving that direction was, by its insertion in the petition, so that it might become the basis of

the authority of the Commissioners, and operate as a restriction on that authority."

All the criticisms upon the bonding proceedings are fully answered by the opinion of the General Term in Calhoun *v.* The Delhi & Middletown Railroad Co., 28 Hun, 388. This opinion, however, has been criticised in the Court of Appeals upon the single question of the right of the taxpayers to make a conditional petition.

Craig *v.* The Town of Andes, 93 N. Y., 405.

In that case the Court of Appeals, by a vote of four to three, held that a conditional petition was unauthorized under the Act of 1869, and that the bonds of the Town of Andes were void for this sole reason. That case is not authority even in the State of New York, for it was a friendly suit, in which the bondholders were not represented, but the counsel upon each side were retained by the Town of Andes to argue such state of facts as was thought to be proper. Accordingly, in Calhoun *v.* The Delhi & Middletwon Railroad, subsequently decided, the Supreme Court of the State of New York, finding the facts as aforesaid with reference to the bringing of the Craig case, has not followed it, and the judgment of the Supreme Court dismissing the complaint of the taxpayers of the Town of Andes in that case upon the merits has been affirmed at General Term, Hun, page , in an opinion recognizing the validity of these bonds. The circumstances of the Craig case are referred to here in explanation of the fact that no reference is made in the argument of counsel or in the opinion of the majority of the Court there to the case of Munson *vs.* The Town of Lyons, *supra*, and the reasoning of this Court by which similar bonds were held to be good. None of the cases cited by the majority of the Court of Appeals in the Craig case upon the subject of conditional consents were bonding cases, except The People *vs.* Adirondack Company, 57 Barbour, 656, decided at General Term and distinguished by the same General Term in The People *vs.* Peck, *supra*. Each of those cases were cases of stock

subscription, arising under statutes which declared in substance that no steps should be taken towards the organization of the company until a certain amount of stock for every mile of the road intended to be built should be in good faith subscribed, and ten per cent. paid thereon. It, undoubtedly, has been the law in the State of New York, that, under such statutes, the subscription to the stock must be an absolute one. From these decisions Judge Danforth seeks to make the deduction, that a conditional petition in a bonding proceeding is contrary to the policy of the State of New York. The fact that chapter 507 of 1870, expressly authorizes the Railroad Commissioners to make a conditional stock subscription, and the express recognition of such petitions in chapter 925 of the Laws of 1871, in these cases seems to be a complete answer to this reasoning.

See Opinion of Judge Finch, 93 N. Y., 419.

In Craig *v.* The Town of Andes, the case failed to show that the alleged condition in the petition had, in fact, been complied with before the petition was presented to the County Judge. The case was presented of an actual condition relating to the future contingent matter. The petitioners had the right to insert in their consent a description of the road to which the aid was to be extended, and the road having already been actually located, words of apparent condition, requiring a location the same as the actually existing location, amount to a mere description. The law upon this point is well stated by Judge Finch, 93 N. Y., page 425: "A condition already performed in no manner qualifies the consents. In such event the consent is absolute the moment it is given. * * * It is not at all doubtful if, when the petition was presented, the railroad company had already located their line in accordance with the alleged conditions, the entire consents could all be counted as absolute, unqualified and dependent upon nothing in the future for their efficacy." Judge Finch argues that, because this is the law, therefore an apparent condition may be disregarded without proof of its actual

performance, while the majority opinion contains nothing in conflict with the law as stated by Judge Finch, but goes upon the ground that the condition was actually existing. They did not hold that it would be necessary to circulate a petition over again merely because a description of the road, as actually located, was inserted in the form of a condition.

Point V.

Under the Act of 1875 the two original actions, now consolidated, were properly brought.

The coupons in judgment were purchased by Mr. Slauson at two different times, and were the subject of two actions, one numbered 2513, in which the Court finds that there was due, at the day of trial, $2,264.84, with interest from October 1, 1884; and the other action, numbered 2512, in which the Court finds there was due $3,047.62, with interest from October 1, 1884 (fol. 109).

These two actions were, by stipulation, tried together. Upon the trial the Town of Andes applied for a consolidation of the two actions, and that motion was granted (after the trial, fol. 107), for the purpose of enabling it to review the case upon its merits in this Court. No assignment of error is made upon the ground that either of the actions brought by Mr. Slauson was improperly or collusively brought. It is doubted whether, under these circumstances, this Court should review the evidence (all of which is presented by the Town of Andes) bearing upon the subject of the two transfers. Neither transfer involves an amount sufficient to allow of an appeal to this Court.

In action No. 2513, the facts are as follows:

Upon April 6, 1883, the defendant in error, being a man of abundant financial responsibility (fol. 227), and in the

habit of buying bonds and commercial paper (fol. 224) purchased $14,600 of the bonds of the Town of Andes; upon guaranty that they were properly and legally issued, and gave his notes therefor. These bonds were seven per cent. bonds running till 1901, and were regarded by Mr. Slauson as a desirable investment. He had not knowledge, at the time of the purchase, that the validity of the bonds was questioned, or that there was any litigation about them (fols. 226 227, 232, 233, 239). No interest in the bonds was reserved by the vendors, nor was there any stipulation or condition of any kind attached to the sale, but the absolute and unconditional title to the bonds was transferred to Mr. Slauson, and the bonds were delivered to him upon April 6, 1882, and have since always remained in his possession and control. No action was brought upon these coupons until nearly two years after the purchase of the bonds from which they were cut, and at the time of the sale, the bringing of an action in this Court was not discussed or suggested in any way. The reason why the antecedent owners of the bonds sold them is thought to be quite immaterial so long as the actual title of the bonds was transferred to Mr. Slauson without resulting consideration, and, in the total absence of proof of any bargain or agreement of any kind between him and the vendors of the bonds, or even of any notice to him of the reason why the vendors saw fit to sell their bonds. The actual reason for the sale is, however, disclosed in the evidence offered by the plaintiff in error. It was not for the sake of bringing an action in this Court, but an action for the cancellation of the bonds had been commenced in the New York State Court, in which an injunction had been obtained against the transfer of these bonds. That injunction was subsequently vacated (fol. 185), and the bonds were held to be good by the decision vacating the injunction. (Calhoun *v.* Delhi & Middletown R. R. Co., 28 Hun, 379.) After the injunction was vacated, certain of the defendants in the action in the State Court, desiring to be rid of the litigation, sold their bonds. It is submitted that, in so doing, those persons

violated no rule of law or of morals. There is no special equity in the claim of a dozen taxpayers of a repudiating municipality, that a party shall stand still and bear the expenses of a long litigation without any security given by them to indemnify him against loss.

In action No. 2512, *the facts are as follrws:*

Upon December 16, 1883, Mr. Slauson bought $2,709 of coupons and gave his note for them, exclusive of accrued interest upon the coupons.

The evidence as to this transfer, as also to the first transfer, is wholly offered by the plaintiff in error, and it is shown that there was an absolute unconditional purchase without any resulting trust or benefit to the vendors. At the time of this second purchase some conversation was had between Mr. Benson, who sold the coupons, and Mr. Slauson. These coupons were coupons which had belonged to the Hudson City Savings Institution, which was a defendant in the action in the State Court. After the injunction was dissolved, in 1882, the bonds had been sold to one Alfred Hoysradt, who sold these coupons to Mr. Slauson. Mr. Slauson inquired about the condition of the bonds and was informed by Mr. Benson that an action had been brought in the State Court to enjoin the transfer of the bonds, and that the injunction against the transfer had been dissolved. Mr. Benson also informed Mr. Slauson that he wished to sell these coupons to some person residing outside of the State of New York, and further stated that a person owning the bonds outside of the State of New York could sue them in the United States Court. There was no request to Mr. Slauson to bring an action in this Court, nor any bargain or understanding upon this subject, nor any condition whatever imposed upon the transfer of the coupons (fols. 237–238). It further appears from the testimony of Mr. Slauson that, from the general reference made by Mr. Benson, he did not understand that the validity of the bonds was attacked, even in the State Court (fols. 226–227).

It will be noticed with reference to both of these transfers that all the parties thereto have given their oral testimony and the same has been introduced in evidence by the plaintiff in error. The parties to these transfers are persons of character, who have fully and frankly disclosed everything connected with the transfers, and no opportunity is given for the inference or suspicion even of any state of facts different from what they have detailed. The Act of 1875 does not, any more than did the Act of 1879, prevent the Courts from taking jurisdiction of suits by an assignment, when the assignment is not fictitious and actually conveys all the interest of the assignor in the thing assigned.

Farmington Village *v.* Pillsbury, 114 U. S., 138.

In that case the Court, after using the language just cited, properly held that the action should have been dismissed, for the reason that fifty per cent. of the amount of the coupons in controversy was to be paid to the assignor in the event of a recovery in the United States Court.

So, in several other cases in this Court, actions have been dismissed under the Act of 1875, when it has been shown that the transfer was made simply for the purpose of collections and reserving an interest in the subject-matter of the litigation, but in no case yet decided in this Court has an action been dismissed where the legal title has been transferred for a valuable consideration and without resulting benefit to the vendor.

See Opinion of Judge Coxe (fol. 274), and cases cited by him.

Point VI.

The pendency of an action in the New York State Court, between different parties, for an injunction against the payment of interest on these bonds, is no defense to this action.

Upon January 3, 1882, Macolm Calhoun and others, as taxpayers of the Town of Andes, brought an action to enjoin the Supervisor of the Town of Andes from paying the interest for 1882 upon these bonds. This interest had been duly raised by the town and paid over to the Supervisor, and was then in his hands (fol. 210). In Kilbourne *v.* St. John, 59 New York, 21, it had been held that such a taxpayers' action could not be maintained, but this action was sought to be maintained under chapter 531 of the Laws of 1881, which declares that all officers and agents of any town may be prosecuted and an action maintained against them to prevent any illegal official act on their part, or to prevent waste of any property or funds of the town, and that any recovery in such an action shall be credited to the defendant in determining his liability to the town. No right of action by a taxpayer against a bondholder is given by any statute of the State of New York, but, notwithstanding this fact, certain bondholders were joined as defendants in this action and a preliminary *ex parte* injunction against selling their bonds was obtained. That injunction was vacated by the Supreme Court of New York, upon the ground that the bonds were valid.

Calhoun *v.* Delhi & Middletown R. R. Co., 28 Hun, 379.

After the injunction had been vacated, Mr. Slauson bought $14,600 of bonds, without any knowledge whatever of any litigation about the bonds (fols. 232, 233, 239).

Purchasers of negotiable securities are not chargeable with constructive notice of the pendency of a suit affecting the title or validity of the securities.

Warren Co. *v.* Marcy, 97 U. S., 96.
Orleans *v.* Platt, 99 U. S., 676.
Carroll Co. *v.* Smith, 111 U. S., 556.
Scotland Co. *v.* Hill, 112 U. S., 183.

The coupons in action No. 2512 were not bought of a party to the action in the State Court, but were bought of the assignee of a party to that action. Mr. Slauson had information at the time of the second purchase that an action had been brought in the State Court to enjoin a transfer (fol. 226). If it were conceded that this was a sufficient notice as to the coupons in action 2512, and that Mr. Slauson is chargerble with notice of the pendency of that action, it would not benefit the plaintiff in error. The Town of Andes was not a party to that action and was in default upon its coupons. If judgment has been rendered in the action in the State Court against the bondholders, adjudging their bonds to be void, then a transferee with notice would be bound by that adjudication, but no such judgment has been obtained; upon the contrary, the decision was the other way, to the effect that the bonds were good, and that the injunction against the bondholders should be dissolved, and it may be here noticed that that action has since been tried and a judgment rendered dismissing the plaintiff's complaint upon the merits, which judgment has been affirmed.

There was nothing whatever to prevent the defendant bondholders in the Calhoun case from suing the Town of Andes upon their coupons at the time these transfers were made. The fact that a few taxpayers have brought an action for the cancellation of the obligations of their municipality does not excuse the default of the municipality in paying its lawful obligations, upon such default a cause of action accrues, and the only way to prevent its enforcement is by giving security and obtaining an injunction. The judgment of the Circuit Court should be affirmed.

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